

# Capital Outlay Presentation

## Revenue Stabilization & Tax Policy Committee

October 13, 2016

# Overview

- ▶ **Joint remarks of Association of Counties, Municipal League, Legislative Finance Committee, and the Department of Finance and Administration**
- ▶ **Framing the Issues**
- ▶ **County and Municipal Survey Results**
- ▶ **State Agency Perspectives**
- ▶ **Administrative Changes Underway**
- ▶ **Recommended Legislative Changes**

# Framing the Issues

- ▶ **We are all responsible to ensure capital outlay funding creates a high “return on investment” to:**
  - Improve health and safety;
  - Improve quality of life;
  - Create and retain jobs; and
  - Provide other critical government services.

# Framing the Issues

- ▶ Over the next five years, the State anticipates issuing \$1.8 billion in bonds to fund state and local capital outlay.
- ▶ New Mexico Finance Authority anticipates issuing another \$0.8 billion in bonds.
- ▶ Absent significant improvements the entire capital outlay system will:
  - Continue to frustrate State and local stakeholders;
  - Continue to provide clear consistent guidelines;
  - Continue to underfund projects; and
  - Continue to negatively impact infrastructure needs.
- ▶ Project funding will only be sufficient if it is directed at prioritized, fully-funded, and ready-to-go projects.

# The Status Quo Isn't Acceptable

The current process allows for hundreds of millions of bond proceeds to sit idle, unable to be expended to create infrastructure economic activity.

# Shedding Light on the Capital Outlay Process

- ▶ ICIP – each fall local entities identify their capital priorities.
- ▶ Legislative Session – Governor allocates 1 / 3 of capacity to a handful of state agency facility projects. Legislature receives over 5,000 capital outlay requests from local entities and non-profits.
- ▶ Capital bill authorizing about 1,000 projects, less Governor vetoes, is enacted.
- ▶ Bond Issuance – Each of the roughly 1,000 project recipients returns a bond questionnaire to the SBOF to determine whether bonds can be issued for each project.
- ▶ Local grantees and state agency grantors enter Intergovernmental Grant Agreements (IGA) setting scope of work and terms each must follow through the life of the project.

# Shedding Light on the Capital Outlay Process

- ▶ Local grantees procure third-party goods and services and request state grantor approval of a Notice of Obligation (NOO) to encumber a portion of project's budget.
- ▶ Only after state grantor approval of an NOO, local entities enter third-party contracts to receive goods and services.
- ▶ Local grantees submit reimbursement requests to state grantors.
- ▶ State grantors review reimbursement requests, request any necessary corrections, then forward to SBOF to draw down bond proceeds.
- ▶ SBOF transfers bond proceeds to state grantor agencies.
- ▶ State grantor agency reimburses local grantee.
- ▶ Local grantee pays vendors.

# Shedding Light on the Capital Outlay Process

- ▶ DFA alone houses several distinct offices that each play a critical role in administering capital outlay:
  - Local Government Division – enters grant agreements, reviews reimbursement requests, trains locals on ICIP, administers Tribal Infrastructure Fund (Other grantor agencies include DOT, ALTSD, IAD, OSE, NMED, etc.).
  - State Board of Finance – bond issuer and processor of reimbursement requests.
  - Financial Control Division – generates payments and controls statewide accounting.
  - Capital Outlay Bureau – executive recommendations on project funding.
  - Administrative Services Division – coordinates payment information and accounting entries to the general ledger in SHARE.



# Shedding Light on the Capital Outlay Process

- ▶ **DFA ensures accountability for taxpayer dollars by enforcing grant agreements, the antidonation clause, procurement standards, IRS bond restrictions, and other laws and policies.**
- ▶ **If you hear that something is “stuck at DFA,” that can mean a many different things. Please call Stephanie Schardin Clarke or Rick Lopez so that DFA can assist in finding a solution.**
- ▶ **Researching these issues often uncovers a communication breakdown somewhere between a local administrator and a state agency.**

# NM Municipal League – Survey Results

- ▶ **The entire capital outlay process is extremely cumbersome:**
  - There are no written guidelines for necessary documentation on reimbursements; and
  - A “Helpful Hints” section would be useful for officials or new staff who are not familiar with the process considering turnover may occur every two years.
- ▶ **Unforeseen health and safety issues (i.e. arsenic) encountered during the process should be taken into consideration regarding the timeframe for completion of the project.**

# NM Municipal League – Survey Results

- ▶ **The award process takes too long from the point of issuance of the bonds to executing a grant agreement:**
  - It can take as long as 9 to 12 months to receive an executed grant agreement.
  
- ▶ **Duplication of information in the forms used by various agencies – for example:**
  - DFA/LGD ICIP Form due Sept 1;
  - Legislative Capital Outlay Request Form due prior to mid point of session;
  - Executive Capital Outlay Survey/Questionnaire Form due before the bill is signed; and
  - State Board of Finance Questionnaire Form (Information needed prior to issuance of the bonds).

# NM Municipal League

## Suggestions for Improvement

- ▶ All the forms essentially require the same type of information, but in different formats. Require a universal form to be used by all state agencies.
- ▶ The schedule for local governments to complete the project should begin upon the receipt of executed capital outlay grant agreement.
- ▶ Written guidelines or a checklist for completing necessary documentation would be extremely helpful for local governments. Guidelines may reduce the time spent by state agencies and local governments clarifying deadlines.

# NM Association of Counties – Survey Results

- ▶ **Capital outlay process is very cumbersome:**
  - Lengthy amount of time to go through all the processes;
  - Lack of clear guidelines and consistency;
  - Delays in receiving funds and in obtaining information once the grant is awarded; and
  - Problems with identified fiscal agents.
  
- ▶ **Many projects do not receive adequate funding:**
  - Small awards for large projects; and
  - Inability to fully fund projects.
  
- ▶ **Appropriations made to nonprofit or quasi-governmental agencies:**
  - County named as fiscal agent without consent and/or knowledge of a project; and
  - Other anti-donation issues.

# NM Association of Counties Suggestions for Improvement

- ▶ **How to improve the process:**
  - Make the process more transparent;
  - Allocate capital funds for high priority needs (i.e., roads, water, acequias, senior centers, etc.); and
  - Take into account project timelines when developing grant agreements (e.g., road projects usually take place during the summer but contracts are often not received until the winter, thereby delaying completion of the project by a year or more).

# NM Association of Counties

## Suggestions for Improvement

- ▶ **Hold educational workshops with legislators every year before the session begins on the capital outlay process to cover:**
  - Uses and other guidelines for severance tax bond allocations;
  - Third party agreements with non-profits, services in lieu of rent payments, and the length of time needed to review and respond to third party agreements;
  - Clarification on the anti-donation clause rules; and
  - Guidance for preventing capital requests that have legal issues, aren't ready, or other impediments for implementation.
- ▶ **Encourage legislators in the same districts and regions to meet with local officials to discuss their capital outlay, legislative policy concerns, needs, and issues.**
- ▶ **Involve the Councils of Government.**

# State Agency Perspectives: How could Capital Outlay Work Better?

## Reduce Proliferation:

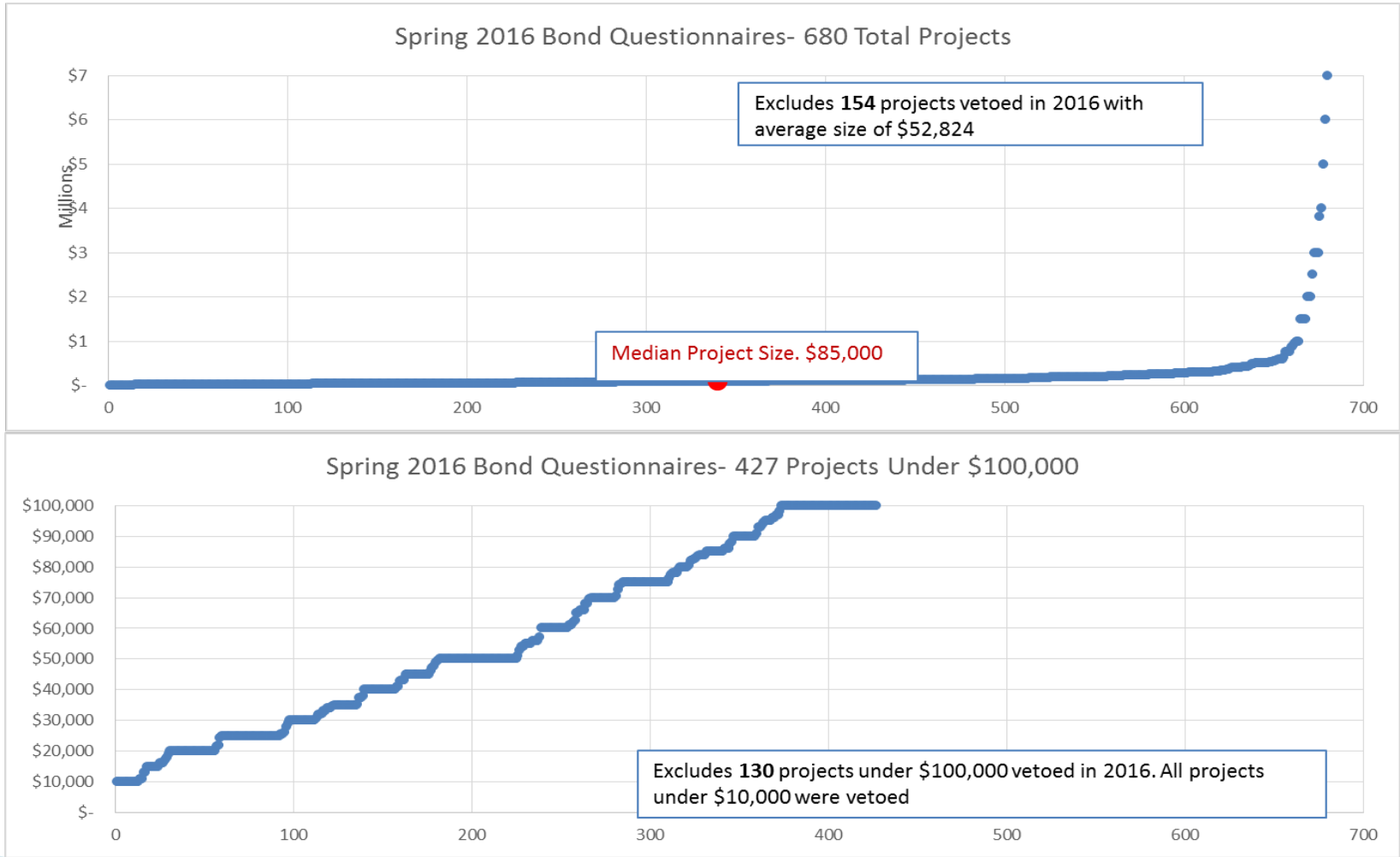
- ▶ About 1,000 new projects are appropriated by the legislature annually. This watering down of capacity is unheard of in other states.
- ▶ **Each project has significant fixed costs, regardless of project size:**
  - Multiple layers of project and legal review;
  - Separate budget in SHARE;
  - Intergovernmental grant agreement;
  - CMPS reporting;
  - Reimbursement requests; and
  - Reversion analysis.



# State Agency Perspectives: How could Capital Outlay Work Better?

- ▶ With all of these and other significant fixed costs, state and local resources are too thin to absorb and to administer such projects successfully. Proliferation of so many small projects ensures everyone involved will continue to be frustrated.

# Visualizing Proliferation



# How Could Capital Outlay Work Better?

- ▶ **Prioritize critical infrastructure over non-essential projects.**
- ▶ **Coordinate Project Funding Streams:**
  - Too many projects are unnecessarily funded from many sources with different deadlines, criteria and oversight requirements.
- ▶ **Streamline and Standardize Forms to Save Time and Energy.**
- ▶ **Limit Projects for Non-Profits:**
  - Anti-donation clause compliance on projects with private operators adds staff and legal costs, delays project completion and requires issuance of more costly taxable bonds.

# How Could Capital Outlay Work Better?

## ▶ Ensure Projects are Ready when Authorized:

- Projects that aren't ready cannot create economic activity.
- Failure to expend 85% of tax-exempt proceeds within 3 years of bond issuance jeopardizes the tax-exempt status of the bonds.
- Projects that still need to accumulate additional funding, permits, zoning changes, federal approvals, etc. are not ready and should not be included in the capital bill.
- Capacity must be set aside every year for a project until it is issued. Currently, \$21.9 million from the 2015 and 2016 sessions has to be taken off the top of 2017 Session capacity.

# Recent Administrative Changes

- ▶ SBOF's paperless, web-based questionnaire system dramatically streamlined local government submission and state review.
- ▶ Executive Order 2013-006 imposed requirements related to local audits as a precursor to receiving State capital funding.
- ▶ The list of authorized but unissued projects is published on the SBOF website.
- ▶ Projects with antidonation issues are no longer issued with conditions to minimize the time bond proceeds sit idle.

# Recent Administrative Changes

- ▶ Bond questionnaires will now be distributed and due to SBOF within the Governor's bill signing period, allowing bonds to be sold more quickly.
- ▶ The Local Government Division generated 2016 grant agreements more quickly than in years past.
- ▶ DFA will be surveying all grantor agencies on their current processes to identify best practices and prescribe standard approaches.

# What can Legislators Do to Help?

- ▶ Create a statewide capital outlay planning council with executive and legislative representation to increase prioritization and reduce proliferation and piecemeal funding.
- ▶ Review the ICIP of local governments in your district to consider their identified priorities.
- ▶ Work together to fully fund a smaller number of large, regional projects that develop critical infrastructure.
- ▶ Fund capital assets with a useful life at least as long as the average maturity of the State's long-term bonds (about 6 years).

# What can Legislators Do to Help?

- ▶ Set a minimum project size (\$50,000?) except for critical health and safety needs and avoid risk of smallest projects being vetoed.
- ▶ Avoid funding projects that will be privately operated – do so only to meet critical health and safety needs of your community.
- ▶ Stress the expectations for timely expenditure to project recipients and accept no excuses. Ask what else needs to happen before a project can proceed before including it in the capital bill.
- ▶ Limit the number of projects any local entity can have outstanding at one time to encourage project completion.
- ▶ Require local project matching funds with exceptions for very small entities and critical health and safety projects.



# What can Legislators Do to Help?

- ▶ Request that the LCS work with DFA to share project data using 21st century database technology
  - Currently, ICIP in the fall and SBOF Questionnaires in the spring are entered through a web-based portal.
  - LCS could adopt a similar web-based portal to accept capital outlay requests.
  - Would allow common, non-confidential data fields to be transferred from one system to another for locals to simply update or verify.
  - Would allow legislators to receive informative reports of all requests in their district.
  - Would flag antidonation problems and projects that aren't shovel ready before appropriation so funds can be better targeted to projects that are ready to succeed.

# Criteria for Identifying Projects to Sweep (SB8, 2016 SS)

- ▶ **SHARE data was reviewed to determine which 2013 and 2014 projects had no Notices of Obligation (NOOs/encumbrances).**
- ▶ **All projects swept in SB8 were 2 to 3 years old with \$0 of the funds encumbered in third-party contracts.**
- ▶ **Each of these projects certified in writing that they would encumber 5% of funds within 6 months of bond issuance and expend 85% within 3 years of bond issuance.**

**Questions?**

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