



NEW MEXICO LEGISLATIVE COUNCIL SERVICE INFORMATION BULLETIN NUMBER 41

LEGISLATIVE RESEARCH, POLICY & COMMITTEE SERVICES

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CAPITAL OUTLAY: A PRIMER FOR 2021

The purpose of this information bulletin is to summarize and clarify the capital outlay process. Please call the Legislative Council Service (LCS) capital outlay staff at (505) 986-4600 if you need additional information.

Capital Outlay Projects: From Wish List to Approved Legislation

Anyone can access the "Capital Outlay Request Form" from the legislative website (www.nmlegis.gov) by clicking on "Capital Outlay" on the drop-down menu under "Quick Links" at the top of the home page and scrolling down to "Forms" near the bottom of the capital outlay page.

The information required to submit a capital project request is now collected online. To complete a request, click on the link to the 2021 online request form and follow the directions. Once the form has been completed online, requesters have the option to print a project summary. The LCS will transmit project requests to legislators electronically. By law, sponsorship information is confidential until capital outlay requests are introduced in the House or the Senate, and sponsor funding information remains confidential unless the legislator requests disclosure.

The form requests project details, including contact information, project cost, description, location and ownership. This information is necessary to draft the legislation. The remaining information requested may be used by state agencies to administer a project if an appropriation is made for that project.

Once the legislative session begins, legislators will receive a list of project requests on a weekly basis until the request deadline. Legislators may indicate the projects they choose to sponsor on this list and return the list to the LCS. Sponsored project requests are then posted on the legislature's website.

At the bill introduction deadline, midway through the session, the LCS provides each legislator a final capital outlay certificate for numbering and introduction on the House or Senate floor. These certificates include all capital outlay projects requested by the sponsoring legislator.

During the second half of the legislative session, the LCS produces funding charts containing the project titles and descriptions of every capital outlay project introduced by each legislator. At this stage, legislators from the same area of the state often communicate with each other to ensure that full funding is provided for a project. These funding charts must be returned to the LCS by a specific

WHAT QUALIFIES FOR CAPITAL OUTLAY FUNDING?

The Property Control Act defines a "capital outlay project" as the acquisition, improvement, alteration or reconstruction of assets of a long-term character that are intended to continue to be held or used, including land, buildings, machinery, furniture and equipment. A capital outlay project includes all proposed expenditures related to the entire undertaking.

Typical capital outlay projects include:

- *planning, designing, constructing, equipping and furnishing community centers, senior centers, fire stations, libraries, courthouses and other buildings;*
- *purchasing vehicles, such as for fire departments, senior centers or police departments;*
- *road construction and street improvements;*
- *park renovations and equipment purchases;*
- *water and wastewater system development and acequia improvements;*
- *construction or renovations to state institutions of higher education; and*
- *construction or improvements to buildings on tribal lands.*

WHAT DOES NOT QUALIFY?

Capital outlay funding cannot be used for operating expenses; salaries; materials and supplies; events, brochures, pamphlets and publications; and retroactive reimbursements of previous purchases.

deadline to ensure that the legislation is processed before the end of the session.

Reauthorizations

A similar process is followed for processing requests to reauthorize funding approved during a previous session.

A "Capital Outlay Reauthorization Request Form" is also available on the legislative website. Reauthorization request information is not collected online at this time. Completed forms must be emailed to the LCS by a legislator or printed, signed by a legislator and delivered to the LCS. Changes to previously approved appropriations typically include extending the expenditure period, expanding or altering the purpose of the appropriation and/or changing the agency that will administer the appropriation. The form leads users through the process of identifying the original appropriation and outlining the needed changes.

If a request for reauthorization cannot be processed for any reason, the LCS will notify the legislator and detail the reasons.

CAPITAL OUTLAY DEADLINES: 2021

February 8: Deadline to submit capital outlay requests online

February 11: Capital outlay request and reauthorization request submission deadline (by 5:00 p.m. to the LCS)

February 15: Capital outlay certificates approval deadline

February 18: Capital outlay certificates introduction deadline

How Is Capital Outlay Funded?

Three main sources fund capital outlay projects: proceeds from severance tax bonds, nonrecurring revenue in the General Fund and proceeds from general obligation bonds. The state of the economy drives the capacity of each. Because general obligation bonds are repaid through property taxes and have to be approved by the voters in a general election, money for these projects is only available in even-numbered years. Severance tax bonds are repaid with revenue from resources severed from the land, such as oil and gas.

Documentation Requirements

Capital assets must be owned by the state or a political subdivision of the state. If the asset will be leased to another organization, the owner will be asked to certify ownership and that the item will be leased at fair market value prior to the release of funding.

The Local Economic Development Act (LEDA) and Capital Outlay

Capital outlay projects that represent a public-private economic development partnership under a local or regional economic development plan may be eligible for funding. LEDA projects must be approved in accordance with local or regional ordinance, and a copy of the project participation agreement between the local government and the qualifying entity must accompany the capital outlay funding request.

Confidentiality

The LCS posts reports listing all of the capital outlay projects that have been requested on the legislative website. The reports catalog the requested projects by agency and by county. In accordance with New Mexico law, a sponsor's capital funding requests are not disclosed unless the sponsor consents to disclosure. Once capital projects are "introduced" in the form of each legislator's capital outlay certificate, those certificates are made public on the website. The certificates show all of a given legislator's sponsored capital projects.

Public School Capital Outlay

It is important to be aware that appropriating capital outlay funding for school districts may result in the districts having to absorb an offset from this appropriation. Because of the court challenge in 1998 by the Zuni Public School District (referred to as the *Zuni* lawsuit), which sought to ensure equalized funding for capital needs in school districts across the state, a standards-based capital outlay funding formula was established to correct inequities. Legislators can refer to Section 22-24-5 NMSA 1978 for statutory language that establishes this offset, which is different for each school district and charter school.

Historical Data on Capital Outlay

The LCS maintains a historical database on capital outlay projects. The database serves as a research tool when legislators have questions about prior capital appropriations and assists the LCS capital outlay team in compiling data and ensuring accuracy when writing reauthorization language. All funded projects are in the database and can be searched by keyword, sponsor, project title, city, county, receiving agency, appropriation ID and law citation. Reports may be generated out of this database. For example, if a legislator wants to know which projects he or she funded in a particular span of time that were related to water and wastewater, LCS staff can produce a report detailing those projects.

2021 BONDING CAPACITY

In December 2020, the Consensus Revenue Estimating Group forecast net senior severance tax bonding capacity at \$433 million and supplemental severance tax bonding capacity at \$191 million. Bonding capacity for water projects was forecast at \$48.5 million, with a forecast of \$24 million each for colonias and tribal infrastructure projects. It is anticipated that the forecasts will be updated prior to or during the upcoming legislative session.

This information bulletin does not represent a policy statement of the LCS or its staff. For more information, contact the LCS at (505) 986-4600.

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