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AGENCY BILL ANALYSIS  
2025 REGULAR SESSION

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Click all that apply:*

Original  Amendment   
Correction  Substitute

Date 2025-02-18

Bill No: HB449

Sponsor: Lente, Derrick J. Agency Name and Code NMHED  
Short HIGHER EDUCATION Number: \_\_\_\_\_  
Title: MAJOR PROJECTS FUND Person Writing Brown, Joe  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	N/A	N/A	N/A	N/A	N/A	N/A

(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**

House Bill 449 (HB449) creates the Higher Education Major Projects Fund, specifies eligible uses of the fund, provides criteria for funding, and requires the higher education department to adopt space and design standards.

Section 1.A. creates the higher education major projects fund as a non-reverting fund within the state treasury. The fund is to be administered by the New Mexico Higher Education Department (NMHED) and will be used for eligible major capital projects as defined. The fund is subject to appropriation by the legislature for qualifying major capital outlay projects at educational institutions.

Section 1.B. sets out the eligible uses of the fund and includes:

1. for the four-year educational institutions, major capital projects for instruction and general and research purposes, which means projects costing fifty million dollars (\$50,000,000) or more; and
2. for the four- and the two-year educational institutions, student housing and student life projects.

Section 1.C. outlines the criteria, including design phase funding with a match requirement, construction phase funding with a match requirement, and the required source of the match funding.

Section 1.D. requires student housing and student life projects to adhere to space and design standards adopted by the higher education department.

Section 1.E. sets forth eligibility for match requirements as outlined within the act to be waived upon a finding by the department. This section also outlines requirements for notification of findings by November 1 of the year preceding the legislative session in which funding is being sought and requiring waivers to be ratified and approved by the legislature prior to the waiver being granted.

Section 1.F. notes money from the fund shall not be appropriated for construction phase funding prior to the completion of at least fifty percent of the design phase and submission of design documents to the department and the legislative finance committee.

Section 1.G. add additional requirements to educational institutions for documentation showing historic on-campus students to student populations and the expected number of on-campus students to be served by a new facility and documentation demonstrating the new facility's compliance with existing institutional space standards and policies.

Section 1.H. defines the following as used within the act:

1. "department" means the higher education department;
2. "four-year educational institution" means a university enumerated in Article 12, Section 11 of the constitution of New Mexico; and
3. "two-year educational institution" means a community college, or a tribal college located wholly within the exterior boundaries of New Mexico but does not mean a constitutional special school.

NMHED's analysis of this bill focuses on the higher education implications of the proposed legislation. Additional insight may be obtained from other agencies' analyses.

## FISCAL IMPLICATIONS

Section 1.A. of HB449 creates the higher education major projects fund as a nonreverting fund in the state treasury. The fund shall be administered by the department, and money in the fund is subject to appropriation by the legislature for qualifying major capital outlay projects at educational institutions. The fund will consist of appropriations, income from investment of the fund, gifts, grants, donations and other money credited to the fund. There is no appropriation to the fund within the bill.

Section 1.B. describes the eligible uses of the fund, noting a major capital project defined for four-year institutions as projects costing fifty million dollars (\$50,000,000) or more. The act also designates student housing and student life projects at four- and two-year educational institutions

as eligible uses for the fund. Because the department does not currently support student housing and student life projects through our current capital outlay funding recommendation process, the deferred maintenance backlog on these facilities may be significant. With this designation in the bill, the solvency of the fund would require a significant investment in the first year, with additional appropriations placed into the fund in subsequent years. The department is not able to calculate the return on investment income, however we do not feel that revenue will be sufficient to sustain the fund without additional appropriations.

HB449 also assigns new functions and duties to NMHED. These additional functions and duties will likely increase NMHED's administrative costs, but further review is still needed to ascertain the full financial impact of act.

This request does not include any additional appropriation to help cover the increased costs and workload associated with these new duties.

## SIGNIFICANT ISSUES

It is unclear if the higher education major projects fund and the eligible major projects as defined within the act are for the purposes of new construction only or if it also encompasses new construction and renovation of major projects and student housing and student life projects. This is a necessary delineation in the act to ensure that the department is able to promulgate rules to manage the funding.

Section 1.D. of the act requires student housing and student life projects to adhere to the space and design standards adopted by the NMHED and that if the project exceeds standards, the associated costs would not be paid by the state. Currently the department does not have space standards for higher education facilities. It is important to note that the NMHED currently has a Space Policy which was updated in March 2022. Within that policy the department established space planning guidelines which speak to campus space use as a significant system wide asset, and the importance of how the assessment of space utilization allows for comparisons with peers of the adequacy of space to support the mission of the institution. NMHED does not incorporate any space planning guidelines into this policy. The reason for this is space planning guidelines are not absolute design standards. NMHED notes in our policy that design standards should be developed by each institution to reflect the uniqueness of the institution and to allow the design standards to be approved by the governing board. The Association of Physical Plant Administrators (APPA), which is an association for higher education facilities officers, publishes the Body of Knowledge (BOK), a searchable, digital database that develops, updates, and disseminates the foundational content required by facilities professionals at colleges, universities, schools, museums, and other nonprofit, educational organizations. The BOK has specific sections on Planning, Design, and Construction with areas on space planning and administration standards.

For the department to fulfill the requirements of the act, we would need to secure funding to hire a consultant group in order to assist with the development of space standards. If this funding is available for the renovation of facilities, many of the existing facilities would not have been built using department space standards. Section 1.D. states to the extent a major capital outlay project

exceeds the standards, the associated costs shall not be paid by the state. This could be problematic if existing facilities do not fall under the newly created standards, leaving a higher education institution without the necessary funding to renovate a student housing or student life facility.

## PERFORMANCE IMPLICATIONS

The New Mexico Higher Education Department would need to either promulgate new rules or amend existing rules in order to support the new requirements of HB449. Here are some examples of where the current New Mexico Administrative Code and Agency Policies would need to be amended to fulfill the requirements of the bill.

- Section B. (2) allows for the use of these funds for student housing and student life projects. Historically, the NMHED has not supported the use of capital funding for some of these types of projects. This would allow the HEIs the possibility of obtaining capital funds for use on those types of projects in the future.
- New Mexico Administrative Code (NMAC) 5.3.9, guides funding for higher education institutions by giving preference to projects that support the review criteria. To that end the NMHED Space Policy outlines the eligible and non-eligible space criteria.
- The NMHED Space Policy states that the state of New Mexico provides state support to fund the construction, renovation, renewal, and the operation and maintenance (O&M) of space utilized for teaching, research, or the preservation of knowledge, including the proportional share used for those activities in any building or facility used jointly with auxiliary enterprise, or space that is permanently unassigned.
- The NMHED Space Policy also states that non-eligible space supports activities that are self-supporting and self-liquidating from the revenues generated by their operations. Income-generating structures and space such as dormitories, cafeterias, student union buildings, stadiums, athletic facilities, and housing or boarding facilities used by a fraternity, sorority, or private club, and alumni centers used solely for those purposes are not eligible.
- Ineligible projects are defined in NMAC 5.3.9, Capital Budgets - Planning and Funding Recommendations. Specifically 5.3.9.8, section C calls out ineligible space which is where the space policy information is derived.

C. Projects ineligible for capital outlay recommendation: Capital outlay projects which are primarily used for the following activities are not eligible for higher education department recommendation:

(1) Non-instructional athletics, such as intercollegiate sports. Examples of ineligible facilities are Pan American center at NMSU and the UNM arena.

(2) Recreational or entertainment events, for either students or the general public. Single purpose auditoriums such as Popejoy hall at UNM are ineligible.

(3) All auxiliaries, such as bookstores, golf courses, student unions, student housing, etc. These operations are not eligible for state funding and are expected to be fully self-supporting and self-liquidating from the revenues generated by their operations.

HB449, section C (1) calls out the requirement for a fifty percent match for these types of projects from sources other than the state for funding the design phase. It also calls for a twenty-five percent match for major instructional and general and research purposes.

Section C (2) states that for the construction phase funding the HEIs would provide at least a ten percent match from sources other than state funds. Funding for the construction phase would not be available until at least fifty percent of the design phase and submission of design documents were made to NMHED and the Legislative Finance Committee (LFC).

- NMAC 5.3.9.8 section F has a match requirement for two-year institutions.

F. Required local match: For two-year institutions, the higher education department requires local matching participation in the amount of 25 percent of the total cost for each project or group of projects. However, the higher education department may waive or reduce the 25 percent matching requirement if the institution is not authorized to issue local general obligation bonds, is at maximum bonding capacity, or has already contributed from local sources at least 25 percent of all construction costs, including the cost of the proposed project.

## ADMINISTRATIVE IMPLICATIONS

Section 1.E. outlines the ability to waive the match requirements within the act upon a finding by the department that the educational institution cannot reasonably afford the required match with institutional reserves, bonds or other sources available to the educational institution. The secretary of higher education shall notify the secretary of finance and administration and the director of the legislative finance committee of the findings by November 1 of the year preceding the legislative session in which funding is being sought by the educational institution. Waivers shall be subject to the ratification and approval of the legislature prior to the waiver being granted.

NMHED has statutory authority, as listed in Section 21-1-21 NMSA 1978, Section 21-1-26A NMSA 1978, Sections 21-2A-1 et seq. NMSA 1978, Section 9-25-13 NMSA 1978, and Section 9-25-8 NMSA 1978 as it relates to the approval of programs, budgets, all building construction, major remodeling projects, and purchases of real property, and capital funding recommendations for all public post-secondary institutions in the state.

The Capital Projects Division is responsible for the statutory management of all areas of Capital Projects for the NMHED, including the Capital Projects Process and Evaluation of infrastructure and facilities for higher education institutions. Also included is the management of the Draw Process for capital funds appropriated to the NMHED. The division develops and manages the policies, standards, database, strategic initiatives, and reports for the NMHED pertaining to the campuses of publicly funded state institutions. Also included is the management of the annual state-wide capital outlay hearings leading to the NMHED's funding recommendations for all

HEIs including tribal and special schools. The NMHED committee is made up of representatives from DFA, LFC, and Energy, Minerals, and Natural Resources Department (EMNRD).

In 2020 the NMHED implemented a new capital project evaluation process. This process incorporated expanded criteria and a formal scoring matrix which highlights project rationale and need, Energy and Sustainability, and Stewardship. Projects are scored based on their specific effect on growth, retention and degree production; how they support workforce needs in the state; how they align with the goals of the institution; and whether a formal facility assessment has been done on campus to support the funding request. Additional scoring criteria includes how the cost estimates were developed, how the institution utilizes Building Renewal and Replacement funding, how the project will impact deferred maintenance, and whether the project incorporates energy and sustainability measures. This process was used in developing the recommendations for the 2025 Legislative Session.

As part of the above process, the NMHED Capital Projects Division implemented a cloud-based software and data warehouse solution to receive, assess, score, and prioritize capital outlay funding requests from HEIs. This solution provides a framework that enabled the NMHED to develop a comprehensive and uniform method for assessing, planning, and recommending capital funding for higher education institutions annually to the New Mexico Department of Finance and Administration and the New Mexico Legislature annually. This system allows the NMHED to develop a statewide capital improvement plan for HEIs that includes improvement priorities that is developed and updated annually and that includes policy directives, funding time frames, estimated costs, and details of each proposed capital project.

The department would need to re-assess our existing process to see how to best incorporate the requirements of HB449 to ensure construction phase funding for major instructional and general and research purposes and student housing and student life projects are considered. The department does not currently review or recommend funding for the design-phase of projects so this would also require additional review to determine an appropriate process for reviewing and recommending funding.

#### CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

#### TECHNICAL ISSUES

For the construction phase funding the HEIs would provide at least a ten percent match from sources other than state funds. The bill then has a subsection a and b that states at least a fifty percent (50%) match for two-year institutions and a twenty percent match for four-year institutions. It seems a bit confusing as section 2 states at least ten percent and the subsections indicate higher amounts.

#### OTHER SUBSTANTIVE ISSUES

N/A

## ALTERNATIVES

N/A

## WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Should HB449 not be enacted the NMHED would continue to review, prioritize and recommend projects utilizing our current process as called for in Statute and New Mexico Administrative Code (NMAC).

## AMENDMENTS

Recommended amendment to section 1.E. removing the requirement of waivers being subject to ratification and approval of the legislature prior to the waiver being granted. The Legislative Finance Committee sits on the NMHED Capital Outlay Committee and would be able to provide feedback on the decisions regarding a request for a waiver by an HEI.