#### SENATE BILL 547

# 49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

## INTRODUCED BY

#### Pete Campos

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24 25 FOR THE LEGISLATIVE FINANCE COMMITTEE

#### AN ACT

RELATING TO PUBLIC MONEY; REQUIRING CAPITAL OUTLAY EXPENDITURES TO RECEIVE THE SAME SCRUTINY AS OPERATIONAL EXPENDITURES; CREATING THE CAPITAL OUTLAY PLANNING AND MONITORING DIVISION IN THE DEPARTMENT OF FINANCE AND ADMINISTRATION; CREATING A JOINT PERMANENT LEGISLATIVE CAPITAL OUTLAY REVIEW COMMITTEE; PROVIDING POWERS AND DUTIES; PROVIDING STAFF; MAKING TRANSFERS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2001; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

- [NEW MATERIAL] CAPITAL OUTLAY REVIEW COMMITTEE Section 1. CREATED--MEMBERSHIP--APPOINTMENT--VACANCIES.--
- The "capital outlay review committee" is created as a permanent joint interim legislative committee. committee shall be composed of nine members from the house of .176957.1

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representatives and nine members from the senate appointed by the New Mexico legislative council. The council shall draw members from the legislative finance committee and, notwithstanding the provisions of Subsection D of Section 2-3-3 NMSA 1978, the committee may include members of the New Mexico legislative council. The members of the capital outlay review committee shall be appointed from each house so as to give the two political parties having the most members in each house the same total proportionate representation on the committee as prevails in that house; provided that in the computation, major fractions shall be counted as whole numbers, and in no event shall either of the two major parties have less than one member from each house. The members shall serve for terms of two years or less expiring on the first day of the regular session held in odd-numbered years. A member may be removed from the committee by the New Mexico legislative council for nonattendance according to New Mexico legislative council policy.

- No action shall be taken by the committee if a majority of the total membership from either house on the council rejects such action.
- C. For the forty-ninth legislature, the chairperson shall be a senate member and the vice chairperson shall be a house member.
- [NEW MATERIAL] SUBCOMMITTEES.--Subcommittees Section 2. .176957.1

may be created only by majority vote of all members appointed to the capital outlay review committee. A subcommittee shall be composed of at least one member from the house of representatives and one member from the senate, and at least one member of the minority party shall be a member of the subcommittee. All meetings and expenditures of a subcommittee shall be approved by the full committee in advance of the meeting or expenditure, and the approval shall be shown in the minutes of the committee.

Section 3. [NEW MATERIAL] CAPITAL OUTLAY REVIEW COMMITTEE
DUTIES.--

- A. The capital outlay review committee shall:
- (1) oversee functions and processes of the capital outlay planning and monitoring division of the department of finance and administration and the several state agencies that propose or review capital project requests pursuant to the Capital Outlay Planning and Monitoring Act;
- (2) adopt standards and guidelines for evaluating requests for capital project funding, including consideration of how singular projects fit in with the state capital improvements plan;
- (3) adopt a standard capital project request form that includes the information required by staff and the committee to evaluate requests;
- (4) prioritize capital project requests .176957.1

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1	received from the capital outlay planning and monitoring
2	division and legislators based on the standards and guidelines
3	and make recommendations to the legislature for funding the
4	prioritized projects;
5	(5) require periodic reports from state
6	agencies, institutions, instrumentalities and political
7	subdivisions that receive funding for state and local capital
8	projects to ensure that:
9	(a) funded capital projects are
10	implemented in a cost-effective manner and consistent with the
11	purpose of the appropriation;
12	(b) funded capital projects are
13	proceeding in a timely manner; and
14	(c) money is reverted to the funding
15	source of the capital project in a timely manner;
16	(6) conduct ongoing reviews of state and local
17	infrastructure capital improvements plans and report to the
18	legislature;

directly or through its staff participate in hearings held by the capital outlay planning and monitoring division and other hearings held by state agencies responsible

perform such other duties as it deems necessary or that are assigned to it by the New Mexico legislative council.

for reviewing capital project proposals and planning; and

B. Unless otherwise provided by law, the following
proposed projects are exempt from committee review, though not
from consideration of the projects in relation to the annual
and four-year state capital improvements plan:
(l) capital projects funded pursuant to the
Public School Capital Outlay Act;
(2) department of transportation road projects
funded in whole or in part by federal highway funding;
(3) capital projects that will be funded by

loans or grants from the New Mexico Finance Authority Act and not from the general fund; and

(4) capital projects authorized by the

(4) capital projects authorized by the legislature that are specifically excluded by law from the committee's review.

# Section 4. [NEW MATERIAL] STAFF.--

A. The staff for the capital outlay review committee shall be provided by the legislative council service and the legislative finance committee.

B. The legislative council service and the legislative finance committee may, subject to legislative appropriation:

- (1) appoint and employ such professional, technical and clerical assistance as they and the committee deem necessary to carry out the duties of the committee; and
  - (2) enter into contracts for professional,

technical or clerical assistance as necessary to carry out the provisions of the Capital Outlay Review Act.

# Section 5. [NEW MATERIAL] INTERAGENCY COOPERATION.--

- A. Each agency, institution and instrumentality of the state and its political subdivisions shall, upon request, assist the capital outlay review committee in carrying out its duties.
- B. The agencies that fund exempt capital projects or that approve capital project funding that has not been evaluated by the committee, including community development projects, public school facilities authority projects, transportation projects and loan or grant fund projects, shall provide timely reports to the committee that describe those projects and provide funding amounts and other information requested by the committee to ensure interagency coordination in the evaluation, funding and monitoring of capital projects.
- Section 6. [NEW MATERIAL] AUDITS.--The committee may request the legislative finance committee, the state auditor or the capital outlay planning and monitoring division of the department of finance and administration to conduct financial, compliance or performance audits on any capital project.

Section 7. [NEW MATERIAL] SHORT TITLE--CAPITAL OUTLAY
PLANNING AND MONITORING ACT.--Sections 7 through 13 of this act
may be cited as the "Capital Outlay Planning and Monitoring
Act".

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Section 8. [NEW MATERIAL] DEFINITIONS.--As used in the Capital Outlay Planning and Monitoring Act:

A. "capital project" means the acquisition, repair, alteration, demolition, renovation, construction or reconstruction of a public building or other public works owned by the state or a political subdivision, including planning and design and including professional engineering, surveying, architectural and landscape architectural services directly related to the capital project; purchase of land for a public building or other public works; site improvements to public property; purchase and installation of equipment of a long-term nature for a public building or other public works; purchase of furniture as part of a renovation or construction of a public building; purchase of motor vehicles or heavy equipment with a life expectancy of five years or more; and hardware and software for voice, radio, video and data communications;

- B. "committee" means the executive capital planning committee; and
- C. "division" means the capital outlay planning and monitoring division of the department of finance and administration.
- Section 9. [NEW MATERIAL] DIVISION CREATED--COMMITTEE
  CREATED--POWERS AND DUTIES.--
- A. The "capital outlay planning and monitoring division" is created in the department of finance and .176957.1

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administration. The division shall:

- direct capital project planning for the (1) executive branch, for state institutions and for political subdivisions that seek state funding for capital projects, either directly or through coordination with other responsible state and local agencies;
- (2) coordinate with the New Mexico finance authority, the New Mexico mortgage finance authority and federal agencies that provide capital project funding for local governments, other eligible entities and rural areas;
- (3) work with state agencies, state institutions, political subdivisions and the legislature to develop priorities to be funded through the legislature's capital outlay process;
- (4) make recommendations to the governor on capital projects to be proposed for funding by the legislature;
- (5) oversee, either directly or through other responsible state agencies, all state-funded capital projects to ensure timely execution of approved capital projects, proper expenditures of state funding and timely reversion of unexpended balances;
- develop procedures to ensure current and (6) complete accounting and reporting on capital projects;
- (7) maintain a central database on capital projects that includes the up-to-date fiscal and programmatic .176957.1

status of each capital project;

- (8) identify stagnant capital projects that should be deauthorized or capital projects that have been completed and fund balances that should be reverted;
- (9) provide training and assistance to state agencies and political subdivisions on planning, budgeting and administration of capital projects, including proper accounting and monitoring and completion of capital projects within statutory deadlines and the reversion of unexpended funds as required by law; and
- of the department of finance and administration to ensure that capital projects authorized by the legislature are properly certified for the issuance of bonds and to ensure that capital projects proceed in a timely manner and meet federal and state requirements.
- B. The division may conduct financial, compliance or performance audits on capital projects on its own or in conjunction with the state auditor or legislative committees.
- C. All state agencies shall assist the division as required for the division to carry out its duties.

# Section 10. [NEW MATERIAL] PLANNING COMMITTEE.--

A. The "executive capital planning committee" is created as an interagency and intergovernmental planning and coordination committee to assist the division in carrying out .176957.1

1	its duties. The committee shall include employees of the
2	following agencies who have direct responsibility for planning
3	or overseeing capital projects for their agencies:
4	(1) the property control division of the
5	general services department;
6	(2) the capitol buildings planning commission
7	(3) the cultural affairs department;
8	(4) the department of transportation;
9	(5) the local government division of the
10	department of finance and administration;
11	(6) the department of environment;
12	(7) the aging and long-term services
13	department;
14	(8) the higher education department;
15	(9) the public school facilities authority;
16	(10) the New Mexico finance authority;
17	(11) the New Mexico mortgage finance
18	authority; and
19	(12) the directors of the councils of
20	governments.
21	B. The division shall invite representatives of
22	federal agencies that provide loans and grants to New Mexico
23	communities for infrastructure and other capital projects to
24	participate in meetings of the committee and may invite other

participants as it deems necessary.

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- C. Members of the committee shall not receive per diem and mileage or any other compensation, perquisite or allowance.
- The committee shall assist the division in capital planning and the development of the state capital improvements plan.
- Section 11. [NEW MATERIAL] STATE CAPITAL IMPROVEMENTS PLAN. --
- Α. The division and the property control division of the general services department shall, with the assistance of the committee, prepare and annually update a five-year "state capital improvements plan" that details the major capital projects recommended to be undertaken by the state or to be undertaken with state aid or under state regulation. The plan shall:
- (1) include an economic forecast and a discussion of economic activities that bear on the need for state or local infrastructure and how completed capital projects have changed the prior-year plan;
- classify capital projects with respect to urgency and need for realization;
- recommend a time sequence for construction (3) or purchase of specific capital projects;
- (4) contain an estimated cost of each capital project, as well as the probable operating and maintenance .176957.1

1	costs of each project;
2	(5) identify any revenue that will be
3	generated by a capital project;
4	(6) identify existing or additional sources of
5	funds needed for construction and operation of each capital
6	project;
7	(7) identify the owner of every capital
8	project; and
9	(8) provide other information for any capital
10	project or for the state capital improvements plan as
11	determined by the division.
12	B. All capital project recommendations of the
13	executive shall be based on the state capital improvements
14	plan.
15	Section 12. [NEW MATERIAL] CAPITAL PROJECT REQUESTS
16	GUIDELINESINFRASTRUCTURE CAPITAL IMPROVEMENTS PLANS
17	SUBMISSION TO DIVISION
18	A. By January 15 of each year, the division shall
19	publish capital project guidelines to be followed by all state
20	agencies and political subdivisions that plan to seek partial
21	or full funding for any capital project in the next legislative
22	session.
23	B. The guidelines shall include provisions to guide
24	state agencies that review capital project requests or
25	infrastructure canital improvements plans from state agencies

1	and infrastructure capital improvements plans from political
2	subdivisions. The state capital improvements plan and each
3	political subdivision's infrastructure capital improvements
4	plan shall be updated each year.
5	C. The review guidelines shall include:
6	(1) requirements for political subdivision
7	infrastructure capital improvements plans to be submitted to
8	appropriate state agencies;
9	(2) requirements for analyzing immediate and
10	future needs of the state, regions of the state and localities;
11	and
12	(3) requirements for analyzing requests in
13	light of:
14	(a) critical needs of the state,
15	including political subdivisions;
16	(b) the necessity of the capital project
17	to meet a critical need;
18	(c) the necessity of the capital project
19	to address a health and safety concern;
20	(d) the capital project's priority on
21	either the state infrastructure capital improvements plan or a
22	local infrastructure capital improvements plan;
23	(e) the ability to phase the capital
24	project, if necessary, and the availability of funding to
25	complete at least one full, workable capital project phase;
	.176957.1

1	(f) the ability of the ultimate
2	governmental recipient to provide necessary and adequate staff
3	and funding for operations and maintenance for the capital
4	project;
5	(g) the expected useful life of the
6	capital project;
7	(h) the available alternatives to the
8	capital project as requested;
9	(i) consideration of whether a
10	renovation project will forestall substantial capital outlay
11	costs in the short and long terms;
12	(j) the availability of sources other
13	than state funding for the capital project, including matching
14	funds;
15	(k) the most appropriate funding sources
16	for types of capital projects; and
17	(1) other considerations determined by
18	the division, after consultation with the executive capital
19	planning committee and the legislative capital outlay review
20	committee.
21	B. By May l of each year, all infrastructure
22	capital improvements plans are due to state agencies, as
23	follows:
24	(1) local government plans are due to the
25	local government division of the department of finance and
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administration;

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- (2) water and wastewater plans that are developed by special districts or that are separate from a municipal or county infrastructure capital improvements plan are due to the department of environment;
- (3) regional plans that involve more than one local government are due to the local government division;
- area agency on aging or local aging (4) program plans are due to the aging and long-term services department;
- (5) public post-secondary educational institution plans are due to the higher education department;
- state agency plans for state agencies under the jurisdiction of the property control division of the general services department are due to the property control division;
- state and local government plans required (7) by the capitol buildings planning commission are due to the capitol buildings planning commission; and
- state fair, cultural affairs department, state parks division of the energy, minerals and natural resources department, state armory board, New Mexico school for the deaf, New Mexico school for the blind and visually handicapped, judicial and any other capital improvement plans or capital project requests that are not specifically assigned .176957.1

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to another state agency are due to the division.

- C. All state agencies that are responsible for reviewing capital project requests shall submit their recommendations to the division by August 1 of each year.
- The division shall review the recommendations and hold hearings on the recommendations by September 15 of each year. The division shall report its findings to the governor and the capital outlay review committee by October 1 of each year. The division's report to the capital outlay review committee shall include proposed changes to the state capital improvements plan and a listing of all capital project requests received, findings of each reviewing agency and findings of the division.
- The division shall publish the annual state capital improvements plan, an abstract of which shall be included in the executive budget recommendations for the following fiscal year.

Section 13. [NEW MATERIAL] CAPITAL PROJECT AUDIT FUND--CREATED--AUDITS--FEES.--

The "capital project audit fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, transfers of the administrative fee provided in Subsection B of this section and any other money credited to the fund. The legislature shall appropriate money in the fund to the state auditor's office and the legislative finance

committee to conduct agreed-upon procedures for audits on any capital projects to ensure compliance with federal laws, internal revenue service rules pertaining to the issuance and use of tax-exempt bonds, other pertinent federal regulations, state laws and any pertinent rules adopted by the state treasurer, board of finance division of the department of finance and administration, state auditor or other state agency.

- B. An audit fee of no more than two-tenths of one percent of the total of each year's capital projects appropriations and bond authorizations, including general obligation bond authorizations, realized by a proportionate reduction of each appropriation or bond authorization, shall be set aside to fund capital project audits.
- C. The division shall assist in the identification of capital projects to be audited.
- Section 14. Section 6-21-31 NMSA 1978 (being Laws 1992, Chapter 61, Section 31) is amended to read:
- "6-21-31. POWERS AND DUTIES.--The New Mexico finance authority oversight committee shall:
- A. monitor and oversee the operation of the New Mexico finance authority;
- B. meet on a regular basis to receive and review reports from the authority on implementation of the provisions of the New Mexico Finance Authority Act and to review and .176957.1

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approve [regulations proposed] rules for adoption pursuant to that act:

- monitor and provide assistance and advice on the public project financing program of the New Mexico finance authority;
- [D. oversee and monitor state and local government capital planning and financing and take testimony from state and local officials on state and local capital needs;
- E. provide advice and assistance to the New Mexico finance authority and cooperate with the executive branch of state government and local governments on planning, setting priorities for and financing of state and local capital projects;
- F.] D. undertake an ongoing examination of the statutes, constitutional provisions, [regulations] rules and court decisions governing state and local government capital financing in New Mexico; and
- [G.] E. report its findings and recommendations, including recommended legislation or necessary changes, to the governor and to each session of the legislature. The report and proposed legislation shall be made available on or before December 15 each year."
- Section 15. Section 7-27-12 NMSA 1978 (being Laws 1961, Chapter 5, Section 10, as amended by Laws 2001, Chapter 37, Section 1 and by Laws 2001, Chapter 338, Section 1) is amended .176957.1

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# "7-27-12. WHEN SEVERANCE TAX BONDS TO BE ISSUED.--

- The state board of finance shall issue and sell all severance tax bonds when authorized to do so by any law that sets out the amount of the issue and the recipient of the money.
- В. The state board of finance shall also issue and sell severance tax bonds authorized by Sections 72-14-36 through 72-14-42 NMSA 1978, and such authority as has been given to the interstate stream commission to issue and sell such bonds is transferred to the state board of finance. state board of finance shall issue and sell all severance tax bonds only when so instructed by resolution of the governing body or by written direction from an authorized officer of the recipient of the bond money.
- Except as provided in Subsection D of this section, proceeds from supplemental severance tax bonds shall be used only for public school capital outlay projects pursuant to the Public School Capital Outlay Act or the Public School Capital Improvements Act.
- Proceeds from supplemental severance tax bonds issued pursuant to Paragraph (2) of Subsection A of Section 19 of Chapter 6 of Laws 1999 (1st S.S.) shall be used for the purposes specified in that paragraph.
- Except as provided in Subsection F of this .176957.1

section, the state board of finance shall issue and sell all supplemental severance tax bonds when so instructed by resolution of the public school capital outlay council pursuant to Section 7-27-12.2 NMSA 1978.

- F. The state board of finance shall issue and sell supplemental severance tax bonds authorized by Paragraph (2) of Subsection A of Section 19 of Chapter 6 of Laws 1999 (1st S.S.) when so instructed by resolution of the [commission on] higher education department.
- G. The state board of finance shall deduct twotenths of one percent from the proceeds of severance tax bonds
  sold in any year for capital projects; provided that this
  provision does not apply to severance tax bonds issued pursuant
  to Subsections B through F of this section. The money deducted
  shall be credited to the capital project audit fund to conduct
  audits of capital projects funded with state funds."

Section 16. Section 9-6-1 NMSA 1978 (being Laws 1977, Chapter 247, Section 1) is amended to read:

"9-6-1. SHORT TITLE.--Sections [1 through 7 of this act]

9-6-1 through 9-6-5.1 and 9-6-15 NMSA 1978 may be cited as the

"Department of Finance and Administration Act"."

Section 17. Section 9-6-3 NMSA 1978 (being Laws 1977, Chapter 247, Section 3, as amended) is amended to read:

"9-6-3. DEPARTMENT OF FINANCE AND ADMINISTRATION-CREATION--TRANSFER AND MERGER OF DIVISION FUNCTIONS--MERGER AND
.176957.1

### CREATION OF DIVISIONS. --

- A. The "department of finance and administration" is created. The department shall consist of those divisions created by law or executive order, as modified by executive order pursuant to Subsection C of this section, including but not limited to:
  - (1) the board of finance division;
  - (2) the financial control division;
  - (3) the local government division;
- (4) the management and contracts review division; [and]
  - (5) the state budget division; and
- (6) the capital outlay planning and monitoring division.
- B. The secretary is empowered to organize the department and the divisions thereof specified in Subsection A of this section and may transfer or merge functions between divisions in the interest of efficiency and economy.
- C. The governor is empowered to merge divisions of the department or to create additional divisions by executive order in the interest of efficiency and economy."
- Section 18. Section 9-6-5.1 NMSA 1978 (being Laws 1983, Chapter 296, Section 7) is amended to read:
- "9-6-5.1. PLANNING POWERS AND DUTIES OF SECRETARY OF
  FINANCE AND ADMINISTRATION.--The secretary of [the department
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of] finance and administration, in addition to the other powers and duties conferred:

- A. shall review federal grant applications and provide management assistance;
- B. shall coordinate, in accordance with directives from the governor's office of policy and planning, state agency plans for economic, natural resource, energy resource and human resource development;
- C. shall provide aid to planning and development districts in developing grant proposals and cooperate with other local entities in developing grant proposals;
- [D. shall acquire, study and review all plans for capital projects proposed by state agencies and render advice on the plans. The secretary shall maintain long-range estimates and plans for capital projects and develop standards for measuring the need for and utility of proposed projects;
- $E_{\bullet}$ ]  $D_{\bullet}$  may contract for, receive and [utilize] use any grants or other financial assistance made available by the United States government or by any other source, public or private;
- [F.] E. may provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico and [to] nonprofit entities having for their purpose local, regional or community betterment. The secretary, .176957.1

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incident to any such programs, may enter into contracts and
agreements with such units of local government, council of
government organizations, Indian tribal governments, nonprofit
entities and the federal government and may participate in or
receive aid from any federal or private program in relation to
such a planning program or assistance;

- [G.] F. shall confer with the state budget division [of the department of finance and administration] and the capital outlay planning and monitoring division in developing comprehensive plans to assure coordination of planning and budgeting functions;
- [H.] G. shall coordinate the state clearinghouse review process;
  - [H.] H. shall develop a status of the state report;
- [J.] I. shall review and coordinate comment by state agencies on draft environmental impact statements;
- [K.] J. shall provide community development block grant technical assistance to local governments;
- $[\frac{1}{100}]$  K. shall administer, in consultation with and upon advice and direction from the community development block grant policy committee, the program for the state community development block grant program;
- [M.] L. shall serve as staff to the New Mexico association of regional councils;
- [N.] M. shall maintain a state planning library; .176957.1

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[0.] N. shall provide planning assistance to county and multi-county districts relative to application by such districts for financial assistance and for regional plan development."

TEMPORARY PROVISION -- TRANSFER OF FUNCTIONS, Section 19. MONEY, APPROPRIATIONS AND PROPERTY .-- On the effective date of the provisions of this act, all functions, money, appropriations, records, furniture, equipment and other property of the capital projects unit of the local government division of the department of finance and administration are transferred to the capital outlay planning and monitoring division of the department of finance and administration.

Section 20. REPEAL.--Section 6-4-1 NMSA 1978 (being Laws 1975, Chapter 282, Section 3, as amended) is repealed.

Section 21. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 2009.

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