# F I S C A L   I M P A C T   R E P O R T

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| | | **LAST UPDATED** | |
| **SPONSOR** | Sharer/Diamond/Burt | **ORIGINAL DATE** | 2/24/2023 |
| **SHORT TITLE** | Capital Outlay Reform Act | **BILL NUMBER** | Senate Bill 479 |
| | | **ANALYST** | Carswell |

### APPROPRIATION*
**(dollars in thousands)**

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|
| FY23 | FY24 | | |
| | $2,500.0 | Nonrecurring | General Fund |

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

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

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| | | | $1,265.0 | $1,265.0 | Recurring | General Fund |
| **Total** | | | $1,265.0 | $1,265.0 | Recurring | General Fund |

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bills 197 and 186
Relates to appropriation in the General Appropriation Act

## Sources of Information

LFC Files

Responses Received From
General Services Department (GSD)
Indian Affairs Department (IAD)
Aging and Long-Term Services Department (ALTSD)
Department of Finance and Administration (DFA)

No Response Received
New Mexico Environment Department (NMED)
New Mexico Finance Authority (NMFA)

## SUMMARY

### Synopsis of Senate Bill 479

Senate Bill 479 appropriates $2.5 million from the general fund to the Legislative Council Service to implement the Capital Outlay Reform Act. SB479 creates the Capital Outlay Council and Capital Outlay Oversight Authority. The bill empowers the Capital Outlay Council to establish criteria for projects to receive capital outlay funds, to review applications for funding, and to recommend projects for funding. The council is to deliver a report detailing its activities and recommendations to the Legislature, governor, the Department of Finance and Administration, and the Legislative Finance Committee by December 15 of each year. SB479 further tasks the council with assisting entities with prioritizing and implementing projects and with establishing reporting requirements and conducting oversight of funded projects.

The Capital Outlay Council would be an interim body of the legislative branch. Its membership would include the secretary of the Department of Finance and Administration, the president pro tem of the Senate, the minority floor leader of the Senate, the Speaker of the House of Representatives, the minority floor leader of the House, the executive director of the New Mexico Municipal League, and the executive director of New Mexico Counties. The chair of the council would be elected by its members and the council would meet at the call of the chair. Council members would receive per diem and mileage for their service.

The council would supervise the Capital Outlay Oversight Authority, also created by the bill. The authority would staff the council and execute its duties and provide technical assistance to entities and oversight of projects required by SB479. The authority would be led by a director selected by the council and the director may hire up to two deputies. The director, deputies, and employees of the authority are exempt from the Personnel Act.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## FISCAL IMPLICATIONS

The appropriation of $2.5 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund. Although this bill does not specify future appropriations, multiyear appropriations, particularly if used to fund services, create an expectation the program will continue in future fiscal years; therefore, this cost could become recurring after the funding period.

SB479 effectively creates a new agency within the Legislature. This fiscal analysis assumes the Capital Outlay Oversight Authority would be staffed by up to 10 FTE, at an average cost of $119 thousand per FTE for salary and benefits. The estimate is based on the average cost of an FTE of the Legislative Finance Committee (LFC). This fiscal analysis further assumes travel expenses of the council at up to half of those incurred by the LFC on an annual basis. Annual member-related expenses to the LFC are approximately $156 thousand.

## SIGNIFICANT ISSUES

New Mexico's capital outlay process is inefficient and the practice of earmarking funding for individual lawmakers to allocate is unique among the states. A 2021 report commissioned from the Council of Development Finance Agencies by the New Mexico Finance Authority concluded "reforming the capital outlay process is the single most important action that would catalyze economic development finance in New Mexico."

Efforts to improve the process for selecting and funding local capital outlay projects have been largely unsuccessful. Without changes to the current capital process, state funds for critical needs at the local level, in particular, will continue to be deficient and potentially pose liability and risk to the citizens of New Mexico.

Given the volatility of severance tax revenue and the inability of available capital outlay funding to meet all of the state's infrastructure needs, legislators and the executive branch continue to scrutinize the vast amount of unexpended appropriations and the large number of projects that remain inactive. Poor project selection—including insufficient planning, a piecemeal approach to funding, and unknown construction costs—continues to delay project completion.

As of December 2022, approximately $3.3 billion from all capital outlay funding sources for about 4,100 active projects remained outstanding, including projects authorized by the Legislature ($1.7 billion), earmark projects ($276.1 million), supplemental severance tax bonds for public schools ($521.8 million), and special appropriations to capital projects ($746.1 million). Local capital outlay projects account for 77 percent of the outstanding projects with balances totaling $892.4 million.

Additionally, limited capital outlay dollars are often appropriated to projects for which other dedicated funding sources exist, including grant funding. Due to a lack of centralized infrastructure planning, capital outlay dollars are not used strategically to supplement such sources for communities or projects of greatest need. This can contribute to geographic inequity, lead to project delays, and increase overall costs, particularly when communities opt to chase capital outlay dollars year after year to fully fund projects.

These problems should compel policymakers to carefully distinguish future project funding by priority, readiness to proceed, need, public purpose, and merit. SB479 appears to be intended to initiate such a process, with the Capital Outlay Council evaluating projects according to consistent and transparent criteria and recommending projects to the Legislature for funding. However, the bill does not require the Legislature to follow the recommendations of the Capital Outlay Council.

## PERFORMANCE IMPLICATIONS

LFC reports on capital outlay have repeatedly identified insufficient vetting of projects prior to funding as a major barrier to successful and timely completion of capital projects. Evaluation of projects according to criteria consistent with best practices for capital budgeting could reduce the risk that projects to which the Legislature appropriates funds are not completed in a timely manner or at all. Such improvements would depend on the extent to which the Legislature incorporated the Capital Outlay Council's recommendations into its funding decisions, which is not required by the bill.

## ADMINISTRATIVE IMPLICATIONS

The General Services Department notes SB479 appears to duplicate functions of the current infrastructure capital improvement plan process and to duplicate some of the oversight duties of the Capitol Buildings Planning Commission. However, while state agencies are required to complete infrastructure capital improvement plans, local governments are not.

The Indian Affairs Department notes provisions of the bill that allow the council to have access to the premises of a project and to nonprivileged documentation and to take over direct administration of a project are problematic with respect to sovereign tribal nations.

The Aging and Long-Term Services Department conducts its own application and review process for capital outlay to senior centers. The department states the Capital Outlay Council created by SB479 could support its Capital Outlay Bureau with the review process, oversight of projects, and technical assistance entities require.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB479 relates to SB186, which creates a Permanent Joint Interim Public Works Committee.

SB479 relates to SB197, which creates the Infrastructure Planning and Development Office and to a $2 million appropriation in the General Appropriation Act to support the Infrastructure Planning and Development Office.

## TECHNICAL ISSUES

The Indian Affairs Department notes provisions of the bill requiring entities to obtain insurance for buildings involved in projects should include language specifying this applies to existing buildings. The department states obtaining insurance on building structures that do not yet exist could be a barrier for entities seeking funding and particularly for tribal nations.

## OTHER SUBSTANTIVE ISSUES

The Indian Affairs Department notes provisions of the bill requiring the council to prioritize projects for which funding cannot be secured through another source could present equity issues for tribes, which use a mix of funding sources to complete capital projects. Project evaluation criteria that would prioritize entities contributing local revenues to projects also present equity issues for tribes, according to the department, due to limitations on local revenue generation.

## ALTERNATIVES

***Capital Outlay Division within DFA.*** DFA submitted the following alternative to SB479:

> An alternative to creating a new office under the Office of the Governor, would be to create a new capital outlay division within DFA. This new division could utilize the administrative and technical support already established within DFA. This new division could expand on the existing services DFA already provides to state agencies and local

governing bodies. This division would be required to work closely with all state agencies and the legislative branch to ensure all capital projects are successfully completed from inception to completion. The mission would be for this division to successfully manage the planning, development, budgeting, grants administration, project management, fiscal management and reporting of all capital outlay projects appropriated through federal bills, the capital appropriation bill, the reauthorization bill, the GOB bill, and any junior bill.

A capital outlay division would be responsible for completing a statewide needs assessment for key infrastructure types, including the development and implementation of a system of capital planning, to assist with the navigation and coordination for state agencies and local governments.

The division would develop a cooperative relationship with federal agencies that provide infrastructure loans and grants to the state and local governments and to serve as the state's single point of entry for state agencies and local governments seeking assistance in accessing funding for infrastructure development and capital projects. The division could facilitate and support planning for high-impact regional and local projects that meet statewide economic and community development goals and to consult regularly with the legislature on infrastructure projects that are most in need of funding to assist with completion of stalled projects. Additionally, the new division could establish a team specifically focused on community water and wastewater systems to provide project development and funding navigation assistance to communities seeking to improve those systems.

A capital outlay division could also be responsible for conducting financial, compliance and performance audits of agencies' capital outlay programs, provide oversight and direction for "at-risk" agencies and entities that have had historical problems with administering capital outlay funds, provide oversight as well as fiscal and technical assistance to state agencies, local governments, higher education institutions, special schools, Native American pueblos and tribes, the governor, legislators, public and external entities relating to funding, procedures and rules pertaining to capital outlay, provide training on state statutes and policies related to capital outlay, oversee state-funded capital projects to ensure timely execution and timely reversions, maintain a central database of capital projects to include up-to-date fiscal and programmatic status, ensure compliance with 5 percent and 85 percent expenditure rules, and identify stagnant capital projects for reauthorization or reversion.

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