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SENATE BILL 305

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Pete Campos

AN ACT

RELATING TO CAPITAL EXPENDITURES; ENACTING THE CAPITAL OUTLAY REFORM ACT; CREATING THE CAPITAL OUTLAY COMMITTEE; CREATING THE CAPITAL PROJECTS TASK FORCE; CREATING THE CAPITAL PLANNING AND ASSISTANCE DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION; PROVIDING FOR AN ANNUAL CAPITAL OUTLAY EXPENDITURE PROPOSAL; PROVIDING FOR AN ANNUAL STATE CAPITAL IMPROVEMENTS PLAN; MAKING APPROPRIATIONS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Capital Outlay Reform Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Capital Outlay Reform Act:

A. "capital project":

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1 (1) means the acquisition, repair, alteration,
2 demolition, renovation, construction, reconstruction,
3 furnishing or equipping of a public building, a public work, a
4 motor vehicle or heavy equipment that:

- 5 (a) is owned by an eligible entity;
- 6 (b) is located wholly in New Mexico; and
- 7 (c) has a useful life of at least six
8 years;

9 (2) includes:

10 (a) the planning, design and
11 professional engineering, surveying, architectural and
12 landscape architectural services that are directly related to a
13 capital project;

14 (b) when for a public building or public
15 work, the purchase of: 1) rights of way; 2) easements; 3)
16 land; 4) property; 5) water rights; and 6) site improvements;

17 (c) the purchase and installation of
18 equipment with a useful life of at least six years for a public
19 building or other public work;

20 (d) the purchase of furniture and
21 fixtures as part of a capital project; and

22 (e) a project that does not result in a
23 capital asset with a useful life of at least six years if the
24 project: 1) consists of the demolition of a capital asset; 2)
25 consists of watershed or forest improvements; 3) is an economic

1 development project funded in accordance with the Local
2 Economic Development Act; or 4) is deemed by the task force as
3 being one for which funding with capital outlay resources is in
4 the best interest of the state; and

5 (3) does not include:

6 (a) capital projects whose funding
7 derives solely from a loan or grant from the New Mexico finance
8 authority, the water trust board, the tribal infrastructure
9 board, the colonias infrastructure board or a combination of
10 those sources; and

11 (b) road projects funded by the
12 department of transportation pursuant to the statewide
13 transportation improvement plan;

14 B. "committee" means the capital outlay committee;

15 C. "division" means the capital planning and
16 assistance division of the department of finance and
17 administration;

18 D. "government entity" means:

19 (1) a state agency, a state institution or a
20 political subdivision of the state that is in compliance with
21 the Audit Act; or

22 (2) a federally recognized Indian nation,
23 tribe or pueblo located wholly or partially in New Mexico that
24 is in compliance with its tribal or pueblo government's
25 requirements to ensure fiscal responsibility;

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1 E. "infrastructure capital improvements plan" means
2 a planning document developed by a government entity that
3 includes capital improvement priorities over a five-year
4 period, that is developed and updated annually and that
5 includes policy directives, funding time frames, estimated
6 costs, justifications and details of each proposed capital
7 project;

8 F. "state capital improvements plan" means a
9 planning document developed by a state agency or a public
10 institution of higher education that includes capital
11 improvement priorities over a five-year period, that is
12 developed and updated annually and that includes policy
13 directives, funding time frames, estimated costs,
14 justifications and details of each proposed capital project;

15 G. "state capital improvement project" means a
16 project on behalf of a state agency or a public institution of
17 higher education for the purchase of or improvements to
18 property owned by a state agency or a public institution of
19 higher education; and

20 H. "task force" means the capital projects task
21 force.

22 SECTION 3. [NEW MATERIAL] CAPITAL OUTLAY COMMITTEE--
23 CREATED--MEMBERSHIP--SUBCOMMITTEES--STAFF.--

24 A. The "capital outlay committee" is created as an
25 interim committee of the legislature and consists of sixteen

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1 members as follows:

2 (1) eight members of the house of
3 representatives appointed by the speaker of the house of
4 representatives; and

5 (2) eight members of the senate appointed by
6 the senate committees' committee or, if the appointments are
7 made during the interim, by the president pro tempore of the
8 senate after consultation with and agreement of a majority of
9 the members of the committees' committee.

10 B. The members of the committee shall be appointed
11 from each chamber so as to give the two political parties
12 having the most members in each chamber the same total
13 proportionate representation on the committee as prevails in
14 that chamber; provided that in the computation, major fractions
15 shall be counted as whole numbers, and in no event shall either
16 of the two major parties have fewer than one member from each
17 chamber.

18 C. The New Mexico legislative council shall appoint
19 a chair and vice chair of the committee. During the fifty-
20 fifth legislature, a member of the senate shall serve as the
21 chair, and a member of the house of representatives shall serve
22 as the vice chair. Thereafter, the seats of chair and vice
23 chair shall alternate between the two chambers for each
24 biennial legislature.

25 D. The chair of the committee may create a

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1 subcommittee of the committee that consists of at least two
2 members from the house of representatives and two members from
3 the senate and whose legislative members collectively represent
4 the two major political parties.

5 E. The legislative council service shall provide
6 staff for the committee. Staff from the division and from the
7 legislative finance committee shall assist legislative council
8 service staff in performing committee-related functions.

9 SECTION 4. ~~[NEW MATERIAL]~~ CAPITAL OUTLAY COMMITTEE--
10 POWERS AND DUTIES.--

11 A. The committee shall:

12 (1) monitor the task force's work related to,
13 and progress on making recommendations for, a state capital
14 improvements plan and capital project expenditure authorization
15 legislation;

16 (2) by April 1 of each year, identify general
17 categories of infrastructure needs and establish broad,
18 objective criteria and a scoring methodology for state agencies
19 and the task force to employ when recommending or selecting
20 proposed capital projects for inclusion in the state capital
21 improvements plan and capital project expenditure authorization
22 legislation;

23 (3) consult with the task force and the
24 division on the development and approval of annual updates to
25 the state capital improvements plan and of capital project

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1 expenditure authorization legislation; and

2 (4) by December 15 of each year, report to the
3 legislature and the governor pursuant to Subsection E of
4 Section 7 of the Capital Outlay Reform Act.

5 B. The committee may direct its staff to research
6 requests from legislators for capital projects that are not
7 included in the proposed state capital improvements plan or its
8 proposed update, or in the proposed capital project expenditure
9 authorization legislation.

10 SECTION 5. [NEW MATERIAL] CAPITAL PROJECTS TASK FORCE
11 CREATED--MEMBERSHIP--SUBCOMMITTEES--STAFF.--

12 A. The "capital projects task force" is created and
13 consists of nine members as follows:

14 (1) two public members appointed by the New
15 Mexico legislative council who have expertise in the planning,
16 engineering, design or construction of large commercial or
17 public capital projects;

18 (2) the director of the legislative council
19 service;

20 (3) the director of the legislative finance
21 committee;

22 (4) the secretary of general services;

23 (5) the secretary of finance and
24 administration;

25 (6) two persons appointed by the governor who

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1 have expertise in the planning, engineering, design or
2 construction of large commercial or public capital projects;
3 and

4 (7) a person appointed by the chief justice of
5 the supreme court.

6 B. The task force shall appoint two co-chairs of
7 the task force. The initial co-chairs shall include the
8 secretary of finance and administration and shall serve for two
9 years. The succeeding co-chairs shall include the secretary of
10 general services and shall serve for two years. The
11 designation of the co-chairs shall alternate every two years
12 thereafter between the secretary of finance and administration
13 and the secretary of general services.

14 C. A co-chair of the task force may create a
15 subcommittee of the task force that consists of at least one
16 member appointed by the New Mexico legislative council, one
17 cabinet secretary and the appointee of the chief justice of the
18 supreme court.

19 D. The legislative finance committee shall provide
20 staff for the task force. Staff from the division, the
21 legislative council service and the administrative office of
22 the courts shall assist legislative finance committee staff in
23 performing task force-related functions.

24 SECTION 6. [NEW MATERIAL] CAPITAL PROJECTS TASK FORCE--
25 POWERS AND DUTIES.--

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1 A. The task force shall propose an annual update of
2 the state capital improvements plan.

3 B. A state capital improvements plan shall:

4 (1) span at least five future years;

5 (2) be based on best practices in, and
6 national standards for, capital budgeting;

7 (3) detail the capital projects recommended
8 for state funding and identify which of those projects would
9 fall under state regulation;

10 (4) include a summary of changes from the
11 prior year's plan;

12 (5) include capital projects geographically
13 diverse from one another;

14 (6) prioritize capital projects recommended
15 for funding using the project-selection criteria and scoring
16 methodology established by the committee;

17 (7) classify capital projects with respect to
18 urgency and need;

19 (8) identify, for each capital project:

20 (a) a recommended time sequence for
21 construction or purchase;

22 (b) the estimated cost;

23 (c) the estimated overall cost of
24 operation and maintenance;

25 (d) the revenue, if any, that will

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1 result from the capital project;

2 (e) existing or additional sources of
3 funding needed for project construction, operation and
4 maintenance;

5 (f) the eligible entity of ownership;
6 and

7 (g) the entity that will operate it;

8 (9) include a description of outstanding
9 capital projects authorized for funding with state money, and,
10 for each:

11 (a) the estimated completion date; and

12 (b) the initial cost, estimated
13 completion cost and estimated first-five-years operational
14 cost; and

15 (10) include other capital project or state
16 capital improvements plan information, if any, required by the
17 task force or the committee.

18 C. The task force shall recommend capital projects
19 for funding with state money only if they are included in the
20 current state capital improvements plan or its proposed annual
21 update.

22 D. By May 1 of each year, using the project-
23 selection criteria and scoring methodology established by the
24 committee pursuant to Paragraph (2) of Subsection A of Section
25 4 of the Capital Outlay Reform Act, the task force shall

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1 develop a process for evaluating capital project requests that
2 include as considerations:

3 (1) the critical needs, including the public
4 health and safety needs, the capital project would address;

5 (2) if the government entity proposing the
6 capital project is not a state agency or instrumentality, the
7 ability of the entity to secure matching funding from nonstate
8 sources for the capital project and the identification of the
9 state entity or political subdivision that will act as fiscal
10 agent;

11 (3) the availability of other sources of
12 funding for the capital project, including funding from state
13 and federal planning and funding agencies and
14 instrumentalities;

15 (4) the feasibility of phasing the capital
16 project, if necessary, and the availability of funding to
17 complete at least one full, functional phase;

18 (5) the ability of the government entity
19 proposing the capital project to provide for the operation and
20 maintenance of the capital project;

21 (6) the estimated useful life of the capital
22 project;

23 (7) the available alternatives to the capital
24 project as requested;

25 (8) the possibility of renovation as a means

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1 to minimize substantial capital outlay spending in the short
2 and long terms;

3 (9) the most appropriate funding source or
4 sources for the type of capital project; and

5 (10) other capital project elements, if any,
6 identified as evaluation considerations by the task force.

7 E. By November 1 of each year, the task force shall
8 submit the proposed state capital improvements plan and the
9 current priority list of capital projects to the committee
10 pursuant to Subsection D of Section 7 of the Capital Outlay
11 Reform Act.

12 SECTION 7. [NEW MATERIAL] CAPITAL PROJECTS REVIEW
13 PROCESS.--

14 A. By May 1 of each year, a government entity
15 applying for the approval of a capital project for the fiscal
16 year beginning July 1 of the next calendar year shall submit to
17 the division the entity's infrastructure capital improvements
18 plan. The infrastructure capital improvements plan shall span
19 at least five fiscal years, beginning July 1 of the next
20 calendar year, and shall be limited to five projects for each
21 year that shall be ranked in priority. A government entity
22 applying for the inclusion of a capital project in the state
23 capital improvements plan shall follow the application
24 guidelines established by the task force. The division shall
25 forward the entire infrastructure capital improvements plan, or

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1 a portion of that plan of a government entity, to the
2 appropriate state agency for its review.

3 B. By July 1 of each year, a state agency that
4 receives a proposal for state funding of a capital project
5 proposed by a government entity other than that state agency
6 shall review the proposal and shall advise the task force and
7 the division whether the capital project should be funded with
8 state money, using the selection criteria and methodology
9 developed by the committee. The recommendations of a state
10 agency shall include a comprehensive analysis of the government
11 entity's capacity and effort to fund the requested capital
12 project from sources other than the state and its ability to
13 operate and maintain the capital project, if applicable.

14 C. By September 1 of each year, the committee shall
15 advise the task force of the committee's best estimate of the
16 total amount of funds that may be available for capital
17 projects for the following fiscal year. The sources for these
18 funds shall include severance tax bonds, nonrecurring general
19 funds, general obligation bonds and other state funds.

20 D. By November 1 of each year, the task force shall
21 submit to the committee the proposed updated state capital
22 improvements plan and the current priority list of capital
23 projects to the committee. The priority list of capital
24 projects shall be based on the project-selection criteria and
25 scoring methodology established by the committee. The total

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1 projected cost of capital projects recommended by the task
2 force shall not exceed seventy percent of the total amount of
3 funds that may be available for capital projects for the
4 following fiscal year as determined by the committee pursuant
5 to Subsection C of this section. At least forty percent of the
6 total amount of funds that may be available for capital
7 projects for the following fiscal year as determined by the
8 committee pursuant to Subsection C of this section shall be
9 allocated to state capital improvement projects.

10 E. By December 15 of each year, the committee shall
11 report to the legislature and the governor regarding its
12 approval of an annually updated state capital improvements plan
13 and its endorsed capital project expenditure authorization
14 legislation for the following fiscal year.

15 SECTION 8. [NEW MATERIAL] CAPITAL OUTLAY PROJECT
16 FUNDING--COMPLIANCE REQUIREMENTS.--Funding for a capital
17 project shall be released only if the government entity
18 sponsoring the capital project is in compliance with:

19 A. budget and quarterly report submissions to the
20 local government division of the department of finance and
21 administration or the public education department, as
22 applicable; and

23 B. capital project-related reporting requirements
24 established by the division.

25 SECTION 9. [NEW MATERIAL] REPORTS.--A government entity

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1 whose capital project is authorized by the legislature for
2 funding shall electronically file with the division quarterly
3 status reports on project appropriations, encumbrances and
4 expenditures.

5 SECTION 10. Section 6-21-31 NMSA 1978 (being Laws 1992,
6 Chapter 61, Section 31) is amended to read:

7 "6-21-31. POWERS AND DUTIES.--The New Mexico finance
8 authority oversight committee shall:

9 A. monitor and oversee the operation of the [~~New~~
10 ~~Mexico finance~~] authority;

11 B. meet [~~on a regular basis~~] regularly to receive
12 and review reports from the authority on implementation of [~~the~~
13 ~~provisions of~~] the New Mexico Finance Authority Act and to
14 review and approve regulations proposed for adoption pursuant
15 to that act;

16 C. monitor, [~~and provide assistance and advice~~]
17 assist and advise on the public project financing program of
18 the [~~New Mexico finance~~] authority;

19 [~~D. oversee and monitor state and local government~~
20 ~~capital planning and financing and take testimony from state~~
21 ~~and local officials on state and local capital needs;~~

22 E. ~~provide advice and assistance to]~~

23 D. assist and advise the [~~New Mexico finance~~]
24 authority and cooperate with the executive branch of state
25 government and local governments on planning, setting

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1 priorities for and the financing of state and local capital
2 projects;

3 ~~[F. undertake an ongoing examination of]~~ E.
4 continually examine the statutes, constitutional provisions,
5 regulations and court decisions governing state and local
6 government capital financing in New Mexico; and

7 ~~[G.]~~ F. report its findings and recommendations,
8 including recommended legislation or necessary changes, to the
9 governor and to each session of the legislature. The report
10 and proposed legislation shall be made available on or before
11 December 15 of each year."

12 SECTION 11. Section 9-6-3 NMSA 1978 (being Laws 1977,
13 Chapter 247, Section 3, as amended) is amended to read:

14 "9-6-3. DEPARTMENT OF FINANCE AND ADMINISTRATION--
15 CREATION--TRANSFER AND MERGER OF DIVISION FUNCTIONS--MERGER AND
16 CREATION OF DIVISIONS.--

17 A. The "department of finance and administration"
18 is created. The department shall consist of those divisions
19 created by law or executive order, as modified by executive
20 order pursuant to Subsection C of this section, including [~~but~~
21 ~~not limited to~~]:

- 22 (1) the board of finance division;
- 23 (2) the financial control division;
- 24 (3) the local government division;
- 25 (4) the [~~management and contracts review~~]

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1 capital planning and assistance division; and

2 (5) the state budget division.

3 B. The secretary [~~is empowered to~~] of finance and
4 administration may organize the department and the divisions
5 [~~thereof~~] specified in Subsection A of this section and may
6 transfer or merge functions [~~between~~] among divisions in the
7 interest of efficiency and economy.

8 C. The governor [~~is empowered to~~] may, by executive
9 order and in the interest of efficiency and economy, merge
10 divisions of the department or [~~to~~] create additional divisions
11 [~~by executive order in the interest of efficiency and~~
12 ~~economy~~]."

13 SECTION 12. A new section of Chapter 9, Article 6 NMSA
14 1978 is enacted to read:

15 "[NEW MATERIAL] CAPITAL PLANNING AND ASSISTANCE
16 DIVISION--POWERS AND DUTIES.--

17 A. The capital planning and assistance division
18 shall:

19 (1) provide information and reports as
20 requested by the capital projects task force and the capital
21 outlay committee;

22 (2) receive infrastructure capital
23 improvements plans from entities applying for capital project
24 funding and forward each plan, either in its entirety or
25 relevant portions of it, to the appropriate state agency for

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1 review;

2 (3) receive state agency recommendations on
3 infrastructure capital improvements plans, receive government
4 entities' identified priorities for capital project funding
5 and, by September 1 each year, make recommendations to the
6 capital projects task force on the development of the state
7 capital improvements plan;

8 (4) assist government entities with the
9 development and implementation of their annual multiyear
10 infrastructure capital improvements plans and preventive
11 maintenance plans;

12 (5) provide training and assistance to
13 government entities on the planning, budgeting and
14 administration of capital projects, including training and
15 assistance related to:

16 (a) the proper accounting, monitoring
17 and completion of capital projects; and

18 (b) compliance with laws imposing
19 project deadlines and requiring the reversion of unexpended
20 project funds;

21 (6) develop procedures to ensure current and
22 complete accounting and reporting on capital projects
23 authorized by the legislature for funding;

24 (7) maintain a central database on capital
25 projects that:

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1 (a) includes the fiscal and programmatic
2 status of each capital project; and

3 (b) allows for government entities that
4 sponsor capital projects authorized by the legislature for
5 funding to file electronic, quarterly status reports on
6 appropriations, encumbrances and expenditures that also include
7 other information, if any, required by the capital planning and
8 assistance division;

9 (8) facilitate the timely execution of capital
10 projects, the proper expenditure of state money and the timely
11 reversion of unexpended capital project balances and oversee,
12 either directly or indirectly through the state agency charged
13 with overseeing the project, all capital projects authorized by
14 the legislature for funding;

15 (9) identify stagnant capital projects
16 authorized by the legislature for funding and make
17 recommendations to the capital projects task force as to those
18 capital projects' reauthorization or deauthorization;

19 (10) cooperate with government entities that
20 sponsor capital projects authorized by the legislature for
21 funding to ensure that each capital project proceeds in the
22 time frame required by the capital project expenditure
23 authorization legislation authorizing funding for the project
24 and to ensure that capital projects meet applicable federal and
25 state requirements;

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1 (11) provide to the legislative council
2 service no later than one-fourth of the number of days of a
3 regular session after the commencement of that session, the
4 information on capital projects required for the legislative
5 council service to draft capital project expenditure
6 authorization legislation;

7 (12) before the date funding for capital
8 projects becomes available, report to the state board of
9 finance on whether, for each capital project authorized by the
10 legislature for funding, the government entity sponsoring the
11 project is in compliance with:

12 (a) budget and quarterly report
13 submissions to the local government division of the department
14 of finance and administration or the public education
15 department, as applicable; and

16 (b) capital project-related reporting
17 requirements established by the capital planning and assistance
18 division; and

19 (13) promulgate rules defining the capital
20 planning and assistance division's statutorily established
21 powers and duties.

22 B. The capital planning and assistance division may
23 evaluate, for compliance and performance, capital projects
24 authorized by the legislature for funding.

25 C. When developing recommendations regarding the

1 state capital improvements plan, the capital planning and
2 assistance division and reviewing state agencies shall
3 coordinate with other capital project planning and funding
4 agencies and instrumentalities in the state, including the New
5 Mexico finance authority, the water trust board, the tribal
6 infrastructure board, the colonias infrastructure board and the
7 public school capital outlay council, and shall coordinate with
8 the federal agencies that provide capital project funding for
9 state and local governments, to:

10 (1) ensure that the capital projects task
11 force has the information it needs to, as appropriate, consider
12 the infrastructure improvement needs in the state and the
13 funding sources available to satisfy those needs; and

14 (2) allow the capital projects task force to
15 prioritize those needs according to the capital outlay
16 committee-established project-selection criteria and scoring
17 methodology.

18 D. The New Mexico finance authority, the water
19 trust board, the tribal infrastructure board and the colonias
20 infrastructure board shall regularly report to the capital
21 planning and assistance division on:

22 (1) the capital project proposals received
23 from government entities by the New Mexico finance authority,
24 water trust board, tribal infrastructure board or colonias
25 infrastructure board as part of the authority's or boards'

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1 funding application process;

2 (2) the capital projects sponsored by those
3 government entities and selected by the New Mexico finance
4 authority, water trust board, tribal infrastructure board or
5 colonias infrastructure board for funding and, for each project
6 selected:

7 (a) the amount of funding awarded; and

8 (b) whether that award is sufficient to
9 fund: 1) the entire project; or 2) an identifiable, discrete
10 phase of the project; and

11 (3) the New Mexico finance authority's, water
12 trust board's, tribal infrastructure board's or colonias
13 infrastructure board's annual and long-range plans.

14 E. The department of transportation shall regularly
15 report to the capital planning and assistance division on the
16 department's annual and long-range state transportation
17 infrastructure plans.

18 F. The capital planning and assistance division
19 shall include in the state capital improvements plan the plans
20 submitted in accordance with Paragraph (3) of Subsection D and
21 Subsection E of this section.

22 G. A government entity that applies for capital
23 project funding or whose capital project is authorized by the
24 legislature for funding shall cooperate with the capital
25 planning and assistance division as necessary for the division

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1 to perform its duties in accordance with this section.

2 H. The capital planning and assistance division
3 shall regularly update the capital projects task force and the
4 capital outlay committee on the status of proposed, ongoing and
5 completed capital projects."

6 SECTION 13. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
7 MONEY, APPROPRIATIONS AND PROPERTY.--On the effective date of
8 this act, all functions, money, appropriations, records,
9 furniture, equipment and other property of the capital outlay
10 bureau of the state budget division of the department of
11 finance and administration are transferred to the capital
12 planning and assistance division of the department of finance
13 and administration.

14 SECTION 14. REPEAL.--Section 6-4-1 NMSA 1978 (being Laws
15 1975, Chapter 282, Section 3, as amended) is repealed.

16 SECTION 15. APPROPRIATIONS.--

17 A. One hundred thousand dollars (\$100,000) is
18 appropriated from the general fund to the legislative council
19 service for expenditure in fiscal year 2022 to implement the
20 provisions of the Capital Outlay Reform Act. Any unexpended or
21 unencumbered balance remaining at the end of fiscal year 2022
22 shall revert to the general fund.

23 B. One hundred thousand dollars (\$100,000) is
24 appropriated from the general fund to the legislative finance
25 committee for expenditure in fiscal year 2022 to implement the

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1 provisions of the Capital Outlay Reform Act. Any unexpended or
2 unencumbered balance remaining at the end of fiscal year 2022
3 shall revert to the general fund.

4 SECTION 16. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is January 1, 2022.

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