



New Mexico State Legislature
Capital Outlay Training Manual
Senate Staff

2026 Legislative Session

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(LCS), and Mike Hammond (OSE)

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2026

***TIMELINE FOR CAPITAL OUTLAY BILL**

Deadline for submitting capital requests online was Friday, December 12, 2025

Session begins Tuesday, January 21, 2026

Informational list of submitted capital outlay project requests sent to legislators tentatively set for Tuesday, January 13

Reauthorization request deadline: 3:00 p.m. on Sunday, February 1, 2026.

Bill and capital outlay request introduction deadline: February 4, 2026

Session ends Thursday February 19 (noon)

*This timeline is based on the following assumptions: • the House, Senate and Executive capital projects are contained in a single bill that originates in one chamber and is not amended in the second; and the reauthorizations are contained in a separate bill that includes House, Senate and Executive reauthorizations. This timeline was created on January 6, 2025 by LCS and is subject to change.

Case Study #1: Public vs. Private Benefit¹

55th Legislature - First Session - 2021

LCS Project ID: 1779

Title: ALB ARTIFICIAL TURF PLAYING FIELD PRCHS

Total Amount Requested: \$185,000

Study, map, plan, design, develop, construct, rehabilitate, renovate, expand, furnish, equip, enhance and otherwise improve, and to acquire property, vehicles and equipment for park and recreational facilities, including public parks and facilities within those parks, swimming pools, tennis courts, sports fields, other recreational facilities, open space, medians, bikeways, Bosque lands, and trails that will benefit Council Districts in Albuquerque in Bernalillo County.

Project Location: Albuquerque

County: Bernalillo

Fiscal Agent: Albuquerque

Funded to Date/Secured: \$185,000

Total Project Cost: \$1,480,000

ICIP ID: 36581

Case Study #1

Discussion Questions:

1. Based on the language and information provided, what is the intent of this capital appropriation? Can you visualize this project? If so, what does the funding look like it will be spent on?
2. Based on the language and information provided, do you see any red flags or have lingering questions about the purpose of the appropriation?

Participant Notes:

¹ Barker, Larry (11/22/2022). [Turf Wars - A Tale of Misused Tax Dollars](#). KRQE News 13 Investigation.

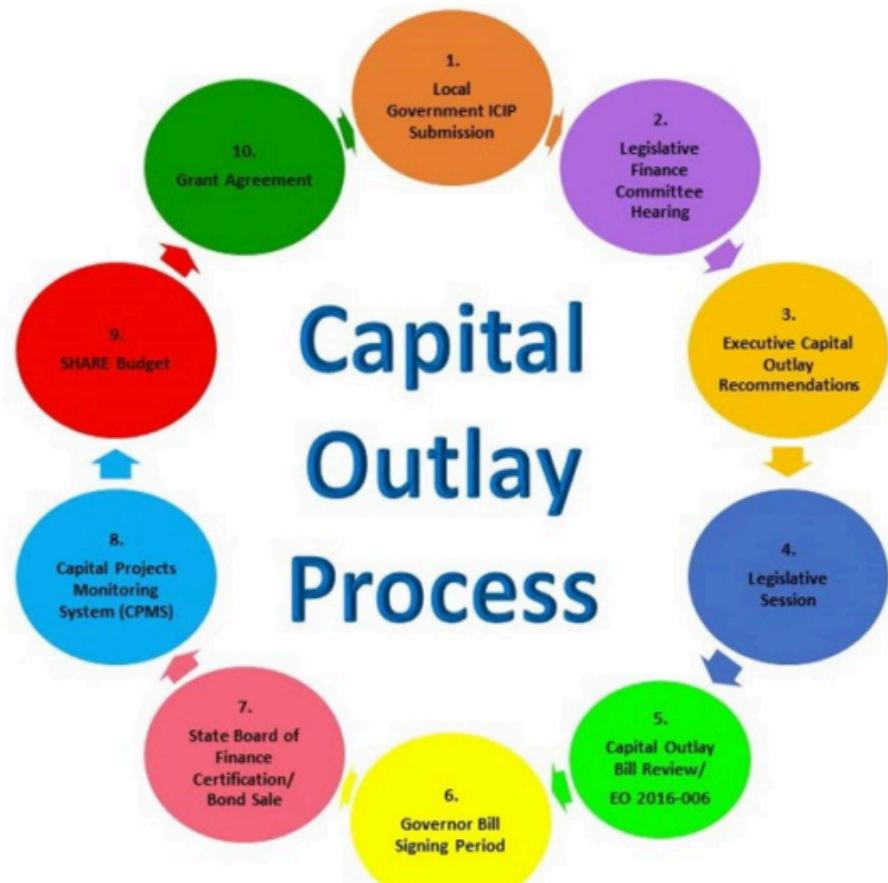


Breaking Down Capital Outlay Language

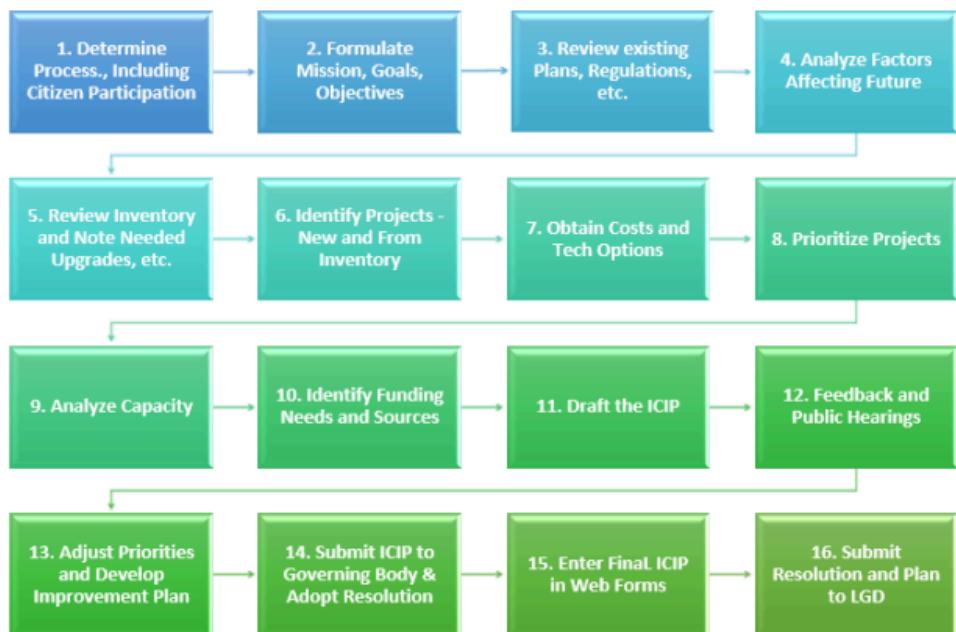
[*\$ Amount*] ... to acquire land, easements and rights of way and to plan, design, construct, replace, renovate, install, furnish, equip, and purchase ... [Project + Location]

Project Status	Typical Language Used	Preferred Funding Source	Purpose of Phase [Participant Notes]
Phase 1	<p><i>To acquire:</i></p> <ul style="list-style-type: none"> • <i>Land</i> • <i>Easements</i> • <i>Right of way</i> <p><i>To:</i></p> <ul style="list-style-type: none"> • <i>Plan</i> • <i>Design</i> 	<ol style="list-style-type: none"> 1. Nonrecurring General Fund Revenues (<i>when available</i>) 2. Severance tax bonds 3. General obligation bonds 4. Other State Funds 	
Phase 2	<p><i>To:</i></p> <ul style="list-style-type: none"> • <i>Plan</i> • <i>Design</i> <p><i>To:</i></p> <ul style="list-style-type: none"> • <i>Construct</i> • <i>Replace</i> • <i>Renovate</i> 	<ol style="list-style-type: none"> 1. Nonrecurring General Fund Revenues (<i>when available</i>) 2. Severance tax bonds 3. General obligation bonds 4. Other State Funds 	
Phase 3	<p><i>To:</i></p> <ul style="list-style-type: none"> • <i>Construct</i> • <i>Replace</i> • <i>Renovate</i> 	<ol style="list-style-type: none"> 1. Nonrecurring General Fund Revenues (<i>when available</i>) 2. Severance tax bonds 3. General obligation bonds 4. Other State Funds 	
Phase 4+	<p><i>To:</i></p> <ul style="list-style-type: none"> • <i>Construct</i> • <i>Replace</i> • <i>Renovate</i> <p><i>To:</i></p> <ul style="list-style-type: none"> • <i>Furnish</i> • <i>Equip</i> • <i>Purchase</i> 	<ol style="list-style-type: none"> 1. Nonrecurring General Fund Revenues (<i>when available</i>) 2. Severance tax bonds 3. General obligation bonds 4. Other State Funds 	

Making Contact with Capital Outlay Constituents



Developing Your ICIP



Infrastructure Capital Improvement Plans and Capital Outlay appropriations are public record. Navigating these resources will help you get a solid grasp on the project scope of the identified priorities of communities and political subdivisions across the state. Look at these resources to answer any questions your legislator may have before making contact with a potential grantee.

<p>Use the Department of Finance and Administration - ICIP Publications if you want all of the data provided about ICIP projects submitted to DFA.</p> 	<p>Use the Department of Finance and Administration - ICIP Dashboard to access project details through an easily navigable portal.</p> 
<p>Use the Department of Finance and Administration - Capital Outlay Dashboard to access existing projects:</p> 	<p>Video instructions on how to navigate these resources. To access the video click on this link or scan the QR code:</p> 

Public Accountability Act HB 493

<https://www.nmlegis.gov/Sessions/25%20Regular/final/HB0493.pdf>

The New Mexico Public Accountability Act was created to strengthen oversight, transparency, and timely use of state capital outlay funds. The state has historically struggled with billions of dollars in unspent or stalled capital projects.

Requirements for Entities Seeking Capital Outlay

1. Audit Compliance :Applicants must be current with the Audit Act. [NM Office of the State Auditor](#)

- Late or missing audits can delay or block funding.

2. Demonstrated Project Readiness: Applicants must show:

- Completed planning or design (or a plan to complete it)
- Site control
- Reliable cost estimates
- A realistic schedule

3. Clear and Eligible Project Scope: Projects must meet the definition of capital outlay, such as:

- Construction
- Major repairs
- Equipment with a long useful life
- Land acquisition or improvement
- Anti-Donation compliance

4. Signed Grant Agreement Before funds are released, grantees must sign a DFA-approved agreement outlining:

- Reporting requirements
- Procurement rules
- Spending restrictions
- Deadlines and reversion terms

5. Ongoing Reporting and Monitoring Grantees must provide:

- Progress reports
- Financial documentation

The Community Development Bureau (CDB) is responsible for:

- The administration of thousands of Capital Outlay projects passed by the New Mexico Legislature and signed into law by the Governor each year.
- The Bureau executes formal agreements with units of local government, processes payments and ensures that these state funds are spent in accordance with authorizing legislation.
- The Community Development Bureau has assisted New Mexico's municipalities and counties in investing over \$150 million in federal Community Development Block Grant (CDBG) funds awarded by the U.S. Department of Housing & Urban Development (HUD) to address local community development needs.
- The CDBG staff members provide assistance and oversight to local officials with the implementation of needed infrastructure, public buildings, housing rehabilitation, economic development, planning and other critical projects for Low to Moderate Income individuals.

DFA-Local Government Division - Community Development Bureau Contact List

Cecilia Mavrommatis	Division Director	505-690-5470
Jeannette Gallegos	Deputy Division Director	505-827-4787
		505-660-8744
Cristina Martinez	Special Services Bureau Chief	505-469-1822
Cordelia Chavez	Budget and Finance Bureau Chief	505-231-7246
Carmen Morin	Community Development Bureau Chief	505-470-8979
Stephen Weinkauf	NM-911 Bureau Chief	505-660-3637
Julie Fernandez	LDWI Bureau Chief	505-629-2845
Mindy Sanchez	Office Manager	505-487-6472

<https://www.nmdfa.state.nm.us/local-government/>

Infrastructure Planning and Development Division

[Infrastructure Planning and Development Division | New Mexico Department of Finance and Administration](#)

The Infrastructure Planning and Development Division (IPDD) supports state agencies, local governments, tribes, and the legislative and judicial branches by planning, funding, and managing capital outlay projects included in the ICIP. The division ensures projects are fully funded through state appropriations, reauthorizations, bonds, special bills, and federal and state grant or loan programs.

IPDD's responsibilities include helping local and tribal governments identify funding sources, reviewing and advising on capital project plans, and coordinating with the Federal Grants Bureau to maximize federal funding opportunities.

IPDD consists of four bureaus:

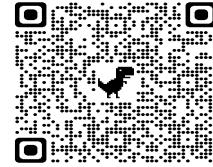
- **Capital Planning and Policy Bureau** – Assists with capital project planning, ICIP development and review, directs entities to funding resources, prepares the Executive Capital Budget, and manages division-wide policies.
- **Capital Navigation and Funding Bureau** – Helps entities find and apply for capital funding, coordinates grant opportunities, and maintains the Catalog of Local Assistance Programs.
- **Rural and Frontier Equity Ombud** – Collects data, builds a rural infrastructure database, and helps rural and tribal regions organize and secure funding for comprehensive asset management planning.
- **Federal Grants Bureau** – Builds capacity for securing and managing federal grants, tracks federal funding, alerts entities to opportunities, assists with applications and grant writing, and supports compliance, accounting, and audit needs.

Staff	Job Title	Phone
Wesley Billingsley	Division Director	505-819-1915
Hallie Brown	Bureau Chief: Capital Navigation and Funding Asst.	505-500-9355
Scott Wright	Bureau Chief: Capital Planning and Policy	505-919-9038
LeAndra Garcia	Federal Grants Management Supervisor	505-469-2729
Anna Naruta-Moya	Federal Grants Acquisition Supervisor	505-470-7935
Michael Gilmore	Rural and Frontier Equity Ombud	505-629-2845
Jason Quintana	Rural and Frontier Equity Ombud,	505 827-8051
Ethan Branch	Funding Assistance Navigator	505-538-5667
Mary Ann Maestas	Local ICIP Coordinator	505-487-3523

Council of Governments

[Regional Planning Districts/Council of Governments | New Mexico Department of Finance and Administration](#)

[North Central NM Economic Development District](#)
[Mid Region Council of Governments](#)
[Eastern Plains Council of Governments](#)
[South Central Council of Governments](#)
[Northwest New Mexico Council of Governments](#)
[Southwest New Mexico Council of Governments](#)
[Southeastern NM Economic Development District](#)



History of Regional Councils

Sometimes referred to as regional councils, Councils of Government (COG's) exist throughout the United States.

A regional council is a multi-service entity with state and locally-defined boundaries that delivers a variety of federal, state and local programs while continuing its function as a planning organization, technical assistance provider and "visionary" to its member local governments. As such, they are accountable to local units of government and effective partners for state and federal governments.

Conception & Early Ideas

Conceived in the 1960s, regional councils today are stable, broad-based organizations adept at consensus-building, creating partnerships, providing services, problem solving, and fiscal management. The role of the regional council has been shaped by the changing dynamics in federal, state and local government relations, and the growing recognition that the region is the arena in which local governments must work together to resolve social and environmental challenges.

Reputation & Function

Regional councils have carved out a valuable niche for themselves as reliable agents and many operate more independent of federal funding. Comprehensive transportation planning, economic development, workforce development, the environment, services for the elderly, and clearinghouse functions are among the types of programs managed by regional councils

Criteria for the Legislature to Evaluate Local Projects

The following criteria may be used as a guide in ranking a project's importance. Legislators can use the criteria as a tool in making funding decisions. The first set of criteria is related to the need of the project, and the second set is related to how well-planned the project is and its current status. This criteria is supplied by the Legislative Council Service:

Need-Based Criteria

1. Project is on the governmental entity's Infrastructure Capital Improvements Plan (ICIP).
2. Project is necessary to eliminate potential or actual health or safety hazards or other liability issues.
3. Project is required by federal, state or judicial mandate.
4. Project will prevent deterioration of assets or will correct infrastructure problems of assets.
5. Project is necessary to address population or client growth, and will provide direct services to that population or clientele.

Planning Criteria

1. Project has been thoroughly planned and is ready to begin.
2. Project has received prior funding and can be completed with this appropriation.
3. Matching funds or a local share has been secured for the project.
4. Operational costs of the project upon completion have been identified and planned for.
5. Project has had public input and buy-in.
6. Project has been designed to be energy efficient in its operation.
7. Construction of the project can be successfully phased, so that each phase will be operational.

The following criteria may be used as a guide in ranking a project's importance based on project summary sheets available through the Legislative Council Service. This criteria is supplied by the Legislative Finance Committee.

LFC's Recommended Capital Outlay Project Vetting Checklist

- Additional funding could complete funding for a project or functional phase of a project that has received previous capital outlay appropriations
- Total project cost estimated by qualified professional(s)
- Planning and design will be complete within six months of executed grant agreement, with project ready to proceed to construction
- Easements, rights of way, land and property have been acquired
- Request will fund the total project cost or functional phase of the project
- Request will fund a functional phase of the project
- State funds will be used to match federal funds
- Entity has committed local revenues to the project
- Project reduces health and safety hazards or provides key infrastructure for economic development
- Project is a top-five priority on a local entity's Infrastructure Capital Improvement Plan
- Funding requested could not be secured through other sources

Additional Considerations

- Funding regional projects in rural areas is encouraged
- Fully funding unfinished projects in one local government area before funding new projects in the same area is encouraged
- Non-profit organizations may request capital outlay only if the request is sponsored by a local government entity. The government entity must be the owner of the project and serve as its fiscal agent.

Questions Worth Inquiring About

- Does the entity have any unspent or unencumbered ARPA funds that could be utilized to complete a project phase or to address their health premium deficits?
- How many capital projects does the entity have on its docket to complete already? On average how many do they complete in a year? Do they have the capacity (e.g. access to contractors, project managers, etc.) to take on new projects?
- What is the entity's current cash balance and bonding capacity? Would the entity be willing to dedicate some of their cash balance or bonding capacity to fund (at least in part) a priority project's funding shortfall?

Funding Prioritization Scorecard

Instructions: Members should seek to evaluate each project based on the prioritization criteria provided below for the desired phase.

	Critical Priority (3 points)	High Priority (2 points)	Moderate Priority (1 point)
Funding Shortfall Previously funded projects that are experiencing a funding shortfall due to inflationary pressures or cost overruns.	Project was <u>previously fully funded</u> and is now experiencing a funding shortfall; <i>and</i> requested amount is estimated by qualified professionals to fully fund the project; <i>and</i> construction has already started or is ready to start when additional funding is secured.	Project was <u>previously partially funded</u> ; <i>and</i> requested amount is estimated by qualified professionals to fully fund the project; <i>and</i> construction has already started or is ready to start when additional funding is secured.	Project was <u>previously partially funded</u> ; <i>and</i> requested amount is estimated by qualified professionals to fully fund the project.
Construction Phase Procurement, acquisition of all materials and services needed for construction.	State funds will be used to match federal or local funds; easements, rights of way, land and property have been acquired; <i>and</i> entity can provide evidence the design phase is complete or nearing completion; <i>and</i> total construction phase cost has recently been estimated by qualified professionals; <i>and</i> project is necessary to address a health and safety hazard or provides key infrastructure for economic development.	Easements, rights of way, land and property have been acquired; <i>and</i> entity can provide evidence the design phase is complete or nearing completion; <i>and</i> total construction phase cost has recently been estimated by qualified professionals; <i>and</i> project is necessary to address a health and safety hazard or provides key infrastructure for economic development.	Total construction phase cost has recently been estimated by qualified professionals; <i>and</i> project is necessary to address a health and safety hazard or provides key infrastructure for economic development.
Design Phase Create plans for the structure's design and a detailed project roadmap.	Project is intended to leverage federal funding; <i>and</i> project is necessary to address a health and safety hazard or provides key infrastructure for economic development; <i>and</i> top 3 ICIP request; <i>and</i> local entity can provide evidence that planning phase is complete.	Project is necessary to address a health and safety hazard or provides key infrastructure for economic development; <i>and</i> top 5 ICIP request; <i>and</i> local entity can provide evidence that planning phase is complete.	On local government body's ICIP list; <i>and</i> local entity can provide evidence that planning phase is complete.
Planning Phase Evaluate the project's requirements, objectives, and feasibility.	Project is intended to leverage federal funding; <i>and</i> project is necessary to address a health and safety hazard or provides key infrastructure for economic development; <i>and</i> Top 3 ICIP request; <i>and</i> entity is prepared to complete planning phase within 6 months of receiving funding.	Project is necessary to address a health and safety hazard or provides key infrastructure for economic development; <i>and</i> Top 5 ICIP request; <i>and</i> entity is prepared to complete planning phase within 6 months of receiving funding.	On local government body's ICIP list; <i>and</i> entity is prepared to complete planning phase within 6 months of receiving funding.

BERN CO RUDOLFO ANAYA NORTH VALLEY LIBRARY REN

Bernalillo County requests **\$412,000** to plan, design, construct, and renovate the building and grounds, furniture and fixtures, including replace and renovate parking lot.

Project location: Bernalillo County

County: Bernalillo

Fiscal agent: Bernalillo County

Total amount requested this legislative session: \$412,000

Funded to date/secured: \$0

Total project cost: \$412,000

Other funding for this project:

Capital appropriations have been made for this project in previous years.

Total project cost estimated by qualified professional(s).

Easements, rights of way, land and property have been acquired.

Request will fund the total project cost

State funds will be used to match federal funds.

LEDA Project

Planning Phase: Preliminary

Project start date: 7/1/24 – 6/30/25 (FY25)

Project Contact: Dean Smith

Title: Library Administrator

Phone: 505-768-5195

Email: dpsmith@cabq.gov

ICIP ID: 291

56TH LEGISLATURE-SECOND SESSION-2024



BERN CO VISTA GRANDE COMMUNITY CENTER CONSTRUCT

Bernalillo County requests **\$500,000** to design, construct, furnish and equip site and building improvements to the vista grande community center in Sandia Park in Bernalillo county.

Project location: Bernalillo County

County: Bernalillo

Fiscal agent: Bernalillo County

Total amount requested this legislative session: \$500,000

Funded to date/secured: \$500,000

Total project cost: \$1,000,000

Other funding for this project: CAP: 0 / GOB: 0 / CAP: 500000

- Capital appropriations have been made for this project in previous years.**
- Total project cost estimated by qualified professional(s).**
- Easements, rights of way, land and property have been acquired.**
- Request will fully fund a phase of the project**
- State funds will be used to match federal funds.**
- LEDA Project**

Planning Phase: Planning and design complete

Project start date: 7/1/24 – 6/30/25 (FY25)

Project Contact: John Barney

Title: PROS Planning Manager

Phone: 505-314-0404

Email: jcbarney@bernco.gov

ICIP ID: 30317

56TH LEGISLATURE-SECOND SESSION-2024



Case Study #2: Determining Project Viability²

LCS WEB ID: 149

DONA ANA CO SOUTH VALLEY FIRE STATION #13 REN

Dona Ana County requests \$875,000

to plan, design, construct, furnish and remodel the South Valley Fire Station #9 in Dona Ana County.

Project location: Dona Ana County

County: Dona Ana

Fiscal agent: Dona Ana County

Total amount requested this legislative session: \$875,000

Funded to date/secured: \$0

Total project cost: \$875,000

Total project cost estimated by qualified professional(s): Yes

The amount requested this session will: fully fund a phase of the project

Have capital appropriations been made for this project in previous years: No

Other funding for this project:

Local Government Planning Fund grant awarded: No

Have easements, rights of way, land or property required to begin construction been acquired?: Yes

The amount requested this session will be used to match federal funds: No

Project start date: 7/1/23 - 6/30/24 (FY 24)

Project Contact: Eric Crespin

Title: Deputy Fire Chief

Phone: 575-647-7925

Email: ericc@donaanacounty.org

ICIP ID: 40188

56TH LEGISLATURE-FIRST SESSION-2023

² Capital Outlay Project Summary Search Engine (2023 Session). [Capital Outlay Web - New Mexico Legislature](#)



Case Study #2

Discussion Questions

1. Based on the language and information provided, what is the intent of this capital appropriation? Can you visualize this project? If so, what does the funding look like it will be spent on?
2. Based on the language and information provided, what information gives you an indication of the capital project's viability?
3. If you were to reach out to the Project Contact for further information, what would be some of the questions you may want to have answered based on the information you have been given?
4. What project summary details or look-fors best indicate a project is primed to be successfully executed?
5. How would you approach and discuss the viability of this project with your Senator?

Reauthorization and Consolidation Language

The request form is found here (follow link or scan the QR code):

https://www.nmlegis.gov/Publications/Capital_Outlay/capital_outlay_reauth_form.pdf



The form is largely self-explanatory. If you need help identifying the legal citation for our appropriation, please contact the LCS.

If your request is to move the balance of an existing appropriation to another existing appropriation, simply mirror the language of the appropriation to which you are seeking to move the balance, per the example below:

Original language for project to be reauthorized:

to purchase and equip senior transportation vehicles in Rio Arriba county;

This language should be included in item 5 on the form (see below).

Original language for project to which funding is being steered:

to plan, design, construct and furnish a senior center at the Pueblo of San Felipe in Sandoval county;

This language should be included in item 6 on the form (see below).

Form Example

5. **What was the original purpose of this appropriation?**

to purchase and equip senior transportation vehicles
in Rio Arriba county;

6. **What is the change to the purpose or the language of the appropriation that you are requesting? ***

to plan, design, construct and furnish a senior center
at the Pueblo of San Felipe in Sandoval county;

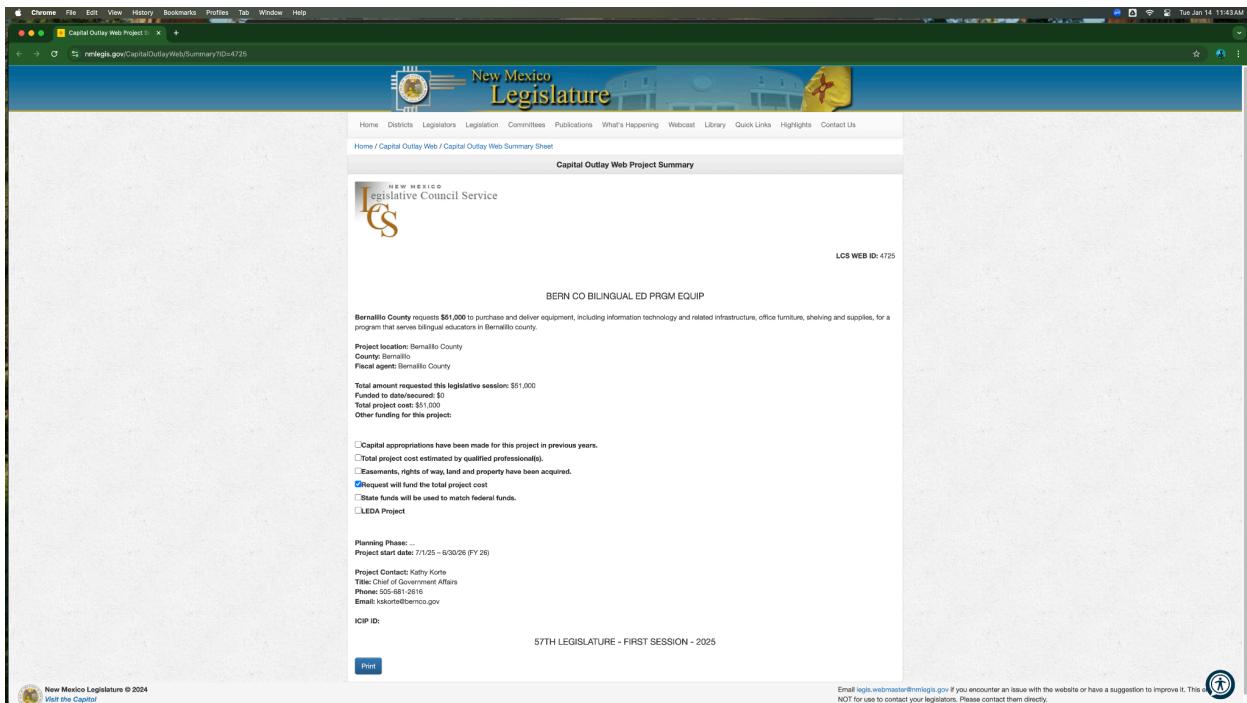
Please note that appropriations can only be reauthorized for a two year period and that a change in the project description may also require a change in the administering agency.

State Capital Outlay for Non-Profits

State Capital Outlay for Non-Profits — City of Albuquerque

The above link contains a training given by the City of Albuquerque for non-profit organizations regarding capital outlay requests. The info below applies across the board to any local government body willing to serve as a fiscal agent for non-profits.

The New Mexico Department of Finance and Administration and the State Board of Finance are the two government bodies that determine and certify project compliance with state law. No local government body has any say over them, nor their decision. **No project will receive funding until these entities give approval “certification” for the project.** All funding requests require a Use Agreement/Contract with a local government body (i.e. City, County, Council of Government, etc.). A request for capital funds from the state is in all actuality a request from the State to provide the local government body with Capital Funds, that the local government body will then spend on your behalf. This is the reason all non-profits must get agreements from a local government body that they are prepared and willing to serve as your fiscal agent. Since the local government body will spend on your behalf, it is important to remember **your organization does not purchase anything.** The local government body is provided funding by the State, and the City makes the purchases. The purchases are then provided to your Organization in return for service, as defined in your Use Agreement/Contract that is secured prior to applying for Capital Outlay from the state.



Note to all legislative aides: A quick way to recognize if a local government body has agreed to serve as a fiscal agent for a non-profit directed project is by the inclusion of "NP" in the title of the project



New Mexico Water Law Overview

The NM Office of the State Engineer is a regulatory agency, charged with administering the state's water resources. The State Engineer has authority over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico, including streams and rivers that cross state boundaries.

Anyone seeking to use water for any purpose in the state of New Mexico must secure proof of valid water rights from the OSE. There are three elements to any water right: place of use, point of diversion, purpose of use. Changes to any of those elements requires permit from NMOSE. Actions requiring a water right permit include:

- New appropriation
- Change in point of diversion
- Change in purpose of use
- Change in place of use
- Declarations of surface water and groundwater rights
- Return flow
- Change of ownership

All water rights permitting takes place in the OSE Water Rights Division. There are seven Water Rights District Offices throughout the state that serve the public. The Water Rights Division has the primary purpose of providing for the efficient administration of the available surface and underground waters of the state. The Water Rights Division administers surface and ground water rights throughout the state in accordance with state laws, court adjudications and State Engineer rules. District Offices are located in Albuquerque, Roswell, Deming, Las Cruces, Aztec, Santa Fe, and Cimarron.

A water right is the legal right to appropriate water for a specific beneficial use. The elements of a water right generally include owner, point of diversion, place of use, purpose of use, priority date, amount of water, and any other element necessary to describe the right.

Valid water rights are based on the availability of water and whether the water will be put to beneficial use. Beneficial use is the basis of water rights administration in New Mexico. Article XVI, Section 3 of the New Mexico Constitution dictates that "Beneficial use shall be the basis, the measure and the limit of the right to the use of water." Beneficial use is the direct use or storage and use of water for a beneficial purpose including, but not limited to agricultural, municipal, commercial, industrial, domestic, livestock, fish and wildlife, and recreational uses.

Under New Mexico water law, all surface water and groundwater belong to the public and are subject to appropriation under the Doctrine of Prior Appropriation, a constitutional provision that says earlier appropriators have priority over later appropriators. The Doctrine of Prior Appropriation mandates that:

- All un-appropriated water within the state of New Mexico belongs to the public
- Water may be appropriated for beneficial use in accordance with state laws
- Senior water rights be served by the available water supply first

In times of water supply shortage, the more senior water rights are served by the available water supply first. Senior water right holders typically include Tribes, Pueblos, and Nations, acequias, and agricultural water users. Junior water right holders typically include Industrial or commercial water users, municipalities, residential water users, and recreational water users.

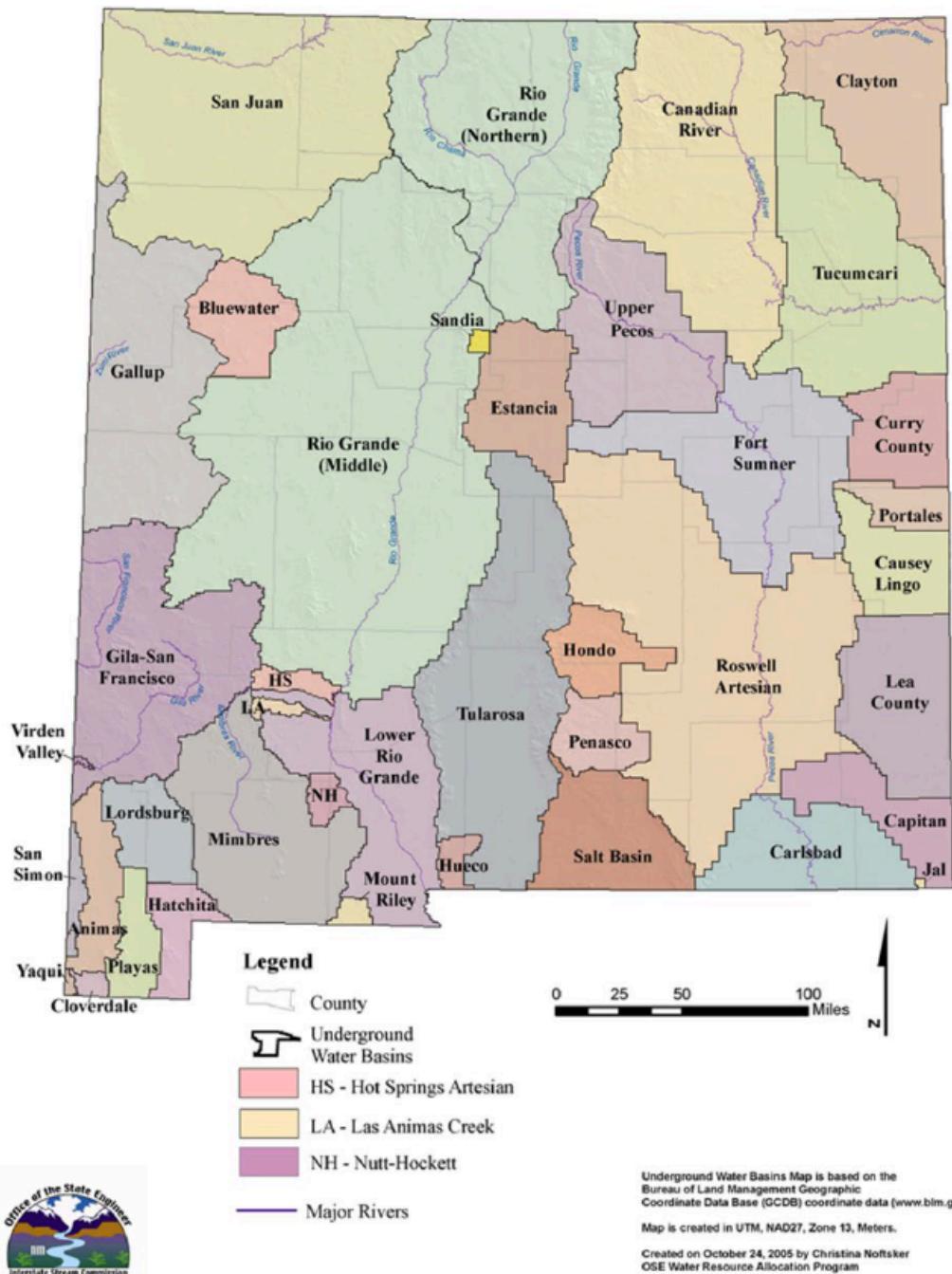
Office of the State Engineer

Overview of Water Law and Permitting Process for Capital Projects



All surface water in the state has been administered by the State Engineer since 1907. Groundwater is administered based on the declaration date of the basin. The entire state is covered by declared groundwater basins – there are 39 groundwater basins in New Mexico.

New Mexico Office of the State Engineer Underground Water Basins in New Mexico





Water Rights Permitting Process

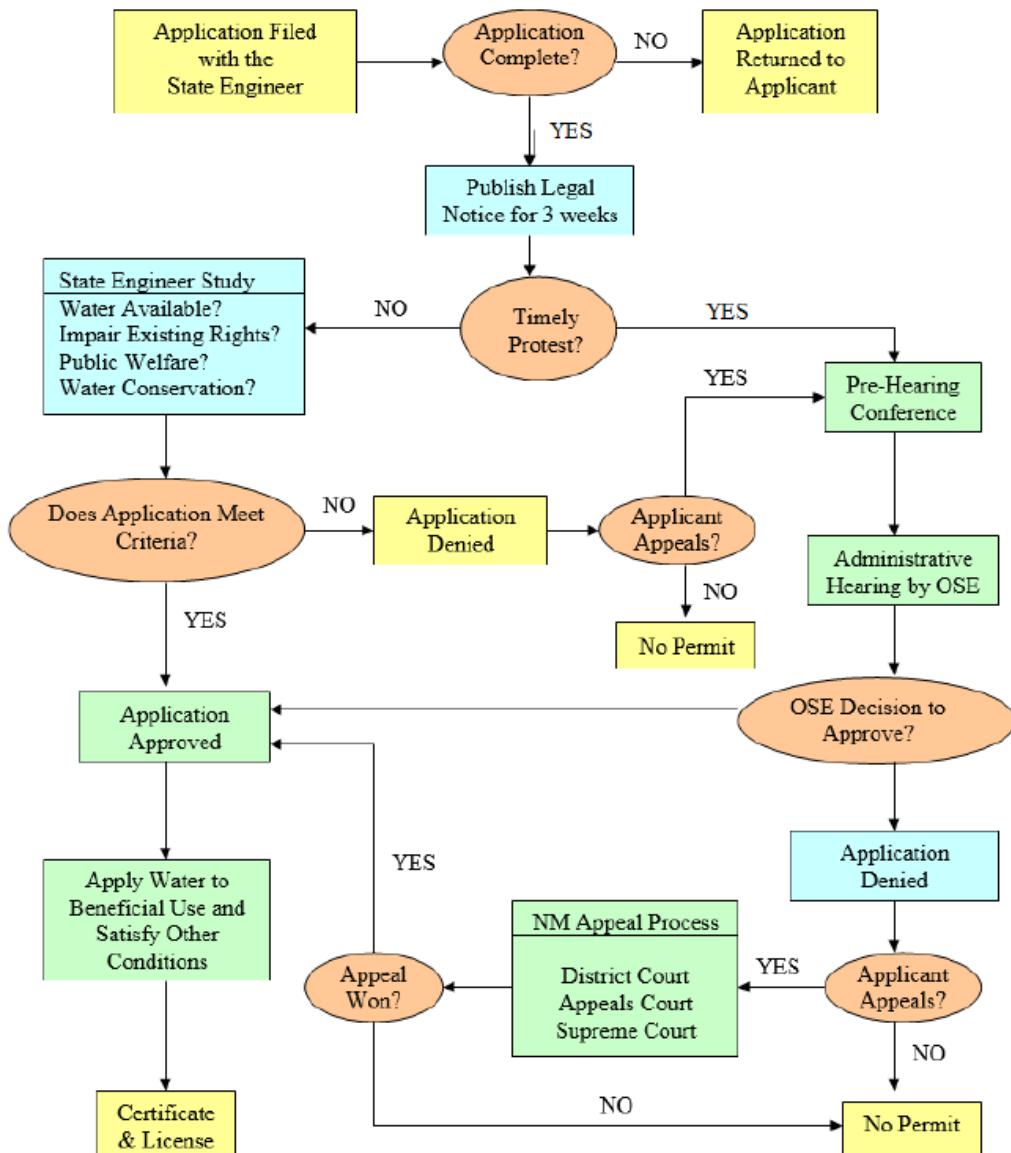
1. **File Application:** The applicant files a permit application with the Office of the State Engineer.
 - a. The owner of record of a water right permit must be the applicant or co-applicant on an application.
 - b. If the applicant is not the owner of the land on which a new point of diversion is proposed, an access agreement must be included in the application.
2. **Legal Notice:** The OSE prepares a legal notice and issues it to the applicant.
 - a. The legal notice provides all essential facts pertaining to the application.
 - b. The applicant must publish the legal notice in the local newspaper and file an affidavit of publication with the OSE.
3. **Protest/Objection:** During the noticing period, any person or other entity may protest/objection the permit application.
 - a. The protester/objection must demonstrate that granting the permit would be contrary to the conservation of water within the state or detrimental to the public welfare of the state, and/or that the protester/objection would be substantially and specifically affected by the granting of the application.
 - b. A valid protest/objection must set forth the grounds for asserting standing, and be legible, signed, and include a complete mailing address.
 - c. A protest/objection must be filed with the OSE no later than 10 calendar days after the date of the last publication of the legal notice.
 - d. If a protest/objection to the permit application filed, it will go through the administrative hearing process.
 - e. If no valid protest/objection is filed, the State Engineer will proceed to evaluate the application.
4. **Administrative Hearing:** If a permit application is protested/objection, or if the applicant is aggrieved by the decision of the OSE, the application will be forwarded to the Administrative Litigation Unit to go through the administrative hearing process.
 - a. The State Engineer encourages the applicant and protester/objection to resolve the protest/objection on their own. If the parties cannot reach agreement to withdraw the protest/objection, the permit application will proceed to an administrative hearing.
 - b. If there is no protest/objection to the permit application, it will advance to the next step in the process.
5. **State Engineer Evaluation:** The State Engineer will evaluate the application for impairment to existing water rights, public welfare of the state, and conservation of water within the state prior to final disposition of the application. In the evaluation the State Engineer considers:
 - a. Does water right exist?
 - b. For a new appropriation, is water available?
 - c. Would granting the application be detrimental to or impair existing water rights?
 - d. Would granting the application be contrary to the conservation of water within the state?
 - e. Would granting the application be detrimental to the public welfare of the state?
6. **Action on Application:** After evaluation, the State Engineer will act to approve or deny the permit application.
 - a. **Approval:** If the State Engineer approves the permit application based on the evaluation, the OSE will establish conditions of approval.
 - i. The OSE may impose reasonable conditions of approval including, but not limited to, measurement at the point of diversion and that the permit holder put the water to beneficial use within a specified period of time.

Office of the State Engineer
Overview of Water Law and Permitting Process for Capital Projects



- ii. The State Engineer retains jurisdiction of all permits.
- b. **Denial:** If the State Engineer denies the permit application based on the evaluation, the applicant will be notified of the decision in writing.
 - i. **Aggrieving a denied application:** If the applicant is aggrieved by the decision of the OSE, they may request that the decision be set aside for reconsideration or an administrative hearing. The applicant must notify the OSE of their aggrievance in writing within 30 days of receipt of the State Engineer's decision.
 - ii. The matter will be forwarded to the Administrative Litigation Unit to go through the administrative hearing process.

Water Right Permitting Process Flowchart



Office of the State Engineer
Overview of Water Law and Permitting Process for Capital Projects



Declaring Groundwater Rights

Any person, firm or corporation claiming to be the owner of an underground water right in New Mexico established prior to the State Engineer's jurisdiction of the underground water basin in which the water right is located may file a declaration pursuant to Section 72-12-5 NMSA. The declarant may file a declaration based on his personal information and belief.

Declaring Surface Water Rights

All water rights established by beneficial use in New Mexico prior to March 19, 1907, were recognized and confirmed by the state constitution at the time of its adoption. Any person, firm or corporation claiming to be the owner of a water right established prior to March 19, 1907, from any surface water source may file a declaration on a form prescribed by the state engineer setting forth the history and continuity of the beneficial use to which said water has been applied.

Return Flow Credit

Return flow is the percentage of the total diversion of water that has been applied to beneficial use and returned to the same source from which it was appropriated. A permit from the state engineer is required to receive return flow credit. An application for return flow must include a return flow plan.

Change of Ownership

In the event of any changes of ownership affecting the title to a water right, the new owner must file a change of ownership form with the State Engineer and include a copy of a warranty deed or other instrument of conveyance that has been duly recorded with the county clerk where the water right is located. A separate change of ownership is required for each declaration, permit, license, or adjudicated water right of record filed with the State Engineer.

Adjudicated Water Rights

Adjudication is the legal process used to define the elements of a water right. Adjudication is carried out in two phases:

- Phase 1 – OSE performs a hydrographic survey to map and identify ownership of water rights
- Phase 2 – Court determination of water right elements

Water Rights Statutes, Rules, Regulations & Guidelines:

- NMSA Chapter 72 – Water Law
- 19.25.2 NMAC
- 19.25.4 NMAC
- 19.27.1 NMAC
- 19.26.2 NMAC

Appendix

State Grants and Other Funding Resources

Public Schools

- [Capital Outlay Bureau | New Mexico Public Education Department \(NMPED\)](#)

Water, Wastewater, Stormwater, Acequias

- [Drinking Water State Revolving Fund \(New Mexico Finance Authority\)](#)
- [Water Trust Board \(New Mexico Finance Authority\)](#)
- [Colonias Infrastructure Fund \(New Mexico Finance Authority\)](#)
- [Tribal Infrastructure Fund \(Indian Affairs Department\)](#)
- [New Mexico Environment Department](#)
- [Construction Programs Bureau](#)
 - <https://nmrwa.org/wp-content/uploads/NMED-CPB-Funding-Programs-Website-Language-2024.pdf>
- [Acequia and Community Ditch Infrastructure Fund \(Office of the State Engineer\)](#)

Roads

- [Local Government Road Fund \(Department of Transportation\)](#)

Project Planning

- [Local Government Planning Fund \(New Mexico Finance Authority\)](#)

Recreational Facilities

- [Grants | New Mexico Department of Finance and Administration/](#)

Outdoor Recreation Trails

- [Outdoor Recreation Trails+ Grant \(Economic Development Department, Outdoor Recreation Division\)](#)

Tribal Infrastructure

- [Tribal Infrastructure Fund \(Indian Affairs Department\)](#)

General – Southern New Mexico

- [Colonias Infrastructure Fund \(New Mexico Finance Authority\)](#)

General – All

- [Community Development Block Grant \(Department of Finance and Administration\)](#)

Downtown Revitalization

- [MainStreet Capital Outlay Program \(Economic Development Department\)](#)

Senior Centers

- [Aging and Long-Term Services Department – the agency has a program through which senior centers can apply to be included in the statewide capital outlay framework](#)

Business and Community Resource directory

<https://edd.newmexico.gov/business-development/brc-directory>

To download a copy of Economic Development Department Business and Resource directory, scan here:



Water and Crisis Response

Follow the links or scan the QR codes to access helpful resources prepared by New Mexico Senate Majority Staff. Links and QR codes will take you to Google Docs we have used to compile resources for your convenience. We will update the Google Docs periodically with new resources over time.

<u>National Referral List to Federal Services</u> 	<u>State and Local Level Referral List to Services</u> 	<u>Federal Disaster Assistance Loans (Businesses, Non-Profits, Residents, Renters)</u> 
<u>Tips and Tools to Prepare for an Emergency (Fire/Flood)</u> 	<u>Water and Reforestation Project Resources</u> 	<u>Water/Wastewater Federal Fund Matching</u> 
<u>NM Executive Budget Recommendations (Historical)</u> 	<u>State Water Task Force Designated Resources and References</u> 	<u>Office of the State Engineer's Overview of Water Rights in New Mexico</u> 

[NM Homeland Security and Emergency Management Website \(landing page is updated to provide resources for an active emergency/crisis and is the lead agency on all FEMA aid\)](#)



