



NEW MEXICO LEGISLATIVE COUNCIL SERVICE INFORMATION BULLETIN NUMBER 37

LEGISLATIVE RESEARCH, POLICY & COMMITTEE SERVICES

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CAPITAL OUTLAY: A PRIMER FOR 2018

The purpose of this information bulletin is to summarize and clarify the capital outlay process. Please call the Legislative Council Service (LCS) capital outlay staff at 986-4600 if you need additional information.

Capital Outlay Projects: From Wish List to Approved Legislation

Anyone can access the "Capital Outlay Request Form" from the legislative website (www.nmlegis.gov) by clicking on "Capital Outlay" on the drop-down menu under "Legislation" at the top of the home page and scrolling down to "Forms" near the bottom of the capital outlay page. Completed forms must be printed and signed by a legislator before being submitted to the LCS.

The form asks for project details, including contact information, project cost, description, location and ownership. This information is necessary to draft the legislation. The remaining information requested may be used by the house or senate.

Legislators or their authorized representatives can deliver completed, signed forms to the LCS for processing. Two copies of each form are required. One will be date-stamped for the legislator's records, and one is retained for processing by the LCS.

Once the legislative session begins, legislators will be provided a weekly report showing all of the capital outlay projects they have sponsored. The report contains the project description, the entity that will receive funding, the project title and the total project cost. Legislators should check the language in their requests to be sure it is accurate.

At the bill introduction deadline, midway through the session, the LCS provides each legislator a final capital outlay certificate for numbering and introduction on the house or senate floor. These certificates contain all capital outlay projects requested by the sponsoring legislator.

During the second half of the legislative session, the LCS produces funding charts containing the project titles and descriptions of every capital outlay project introduced by each legislator. At this stage, legislators from the same area of the state often communicate with each other to ensure that full funding is approved for a project. These funding charts must be returned to the LCS by a specific deadline to ensure that the legislation is processed before the end of the session.

WHAT QUALIFIES FOR CAPITAL OUTLAY FUNDING?

Typical capital outlay projects include:

- *planning, designing, constructing, equipping and furnishing community centers, senior centers, fire stations, libraries, courthouses and other buildings;*
- *purchasing vehicles, such as for fire departments, senior centers or police departments;*
- *street improvements;*
- *park renovations or equipment;*
- *acequia improvements;*
- *water and wastewater systems;*
- *improvements to existing buildings to comply with the Americans with Disabilities Act of 1990;*
- *construction or renovations to state institutions of higher education; and*
- *construction or improvements to buildings on tribal lands.*

WHAT DOES NOT QUALIFY?

Capital outlay funding cannot be used for operating expenses; salaries; materials and supplies; events, brochures, pamphlets and publications; and retroactive reimbursements of previous purchases.

Reauthorizations

A similar process is followed for processing requests to reauthorize funding approved during a previous session.

A "Capital Outlay Reauthorization Request Form" is also available on the website. Changes to previously approved funding typically include extending the expenditure period, expanding or altering the project's purpose, changing the agency that will administer the project and clarifying a purpose. The LCS needs as much information as possible about the original project (appropriation ID number, current project balance, whether the project was reauthorized before and the original citation in the law for the project) to efficiently and accurately process the reauthorization request. The form leads users through this process.

If a request for reauthorization cannot be processed for any reason, the LCS will notify the legislator and detail the reasons.

CAPITAL OUTLAY DEADLINES: 2018

January 28: Capital outlay request and reauthorization request submission deadline (by 5:00 p.m. to the LCS)

January 31: Capital outlay certificates introduction deadline

How Is Capital Outlay Funded?

Three main sources fund capital outlay projects: proceeds from severance tax bonds, nonrecurring revenue in the General Fund and proceeds from general obligation bonds. The state of the economy drives the capacity of each. Because general obligation bonds are repaid through property taxes and have to be approved by the voters in a general election, money for these projects is only available in even-numbered years. Severance tax bonds are repaid with revenue from resources severed from the land, such as oil and gas.

Documentation Requirements

Capital assets must be owned by the state or a political subdivision of the state. If the asset will be leased to another organization, the owner will be asked to certify ownership and that the item will be leased at fair market value prior to the release of funding.

The Local Economic Development Act (LEDA) and Capital Outlay

Capital outlay projects that represent a public-private economic development partnership under a local or regional economic development plan may be eligible for funding. LEDA projects must be approved in accordance with local or regional ordinance, and a copy of the project participation agreement between the local government and the qualifying entity must accompany the capital outlay funding request.

Confidentiality

The LCS posts reports listing all of the capital outlay projects that have been requested on the legislative website. The reports catalog the requested projects by agency and by county. In accordance with New Mexico law, a sponsor's capital funding requests are not disclosed unless the sponsor requests disclosure. Once capital projects are "introduced" in the form of each legislator's capital outlay certificate, those certificates are made public on the website. The certificates show all of a given legislator's sponsored capital projects.

Public School Capital Outlay

It is important to be aware that appropriating capital outlay funding for school districts may result in the districts having to absorb an offset from this appropriation. Because of the court challenge in 1998 by the Zuni Public School District (referred to as the *Zuni* lawsuit), which sought to ensure equalized funding for capital needs in school districts across the state, a standards-based capital outlay funding formula was established to correct inequities.

Legislators can refer to Section 22-24-5 NMSA 1978 for statutory language that establishes this offset, which is different for each school district and charter school.

Historical Data on Capital Outlay

The LCS keeps an historical database on capital outlay. It serves as a research tool when legislators have questions about prior capital appropriations and assists the LCS capital outlay team in compiling data and ensuring accuracy when writing reauthorization language. All funded projects are in the database and can be searched by keyword, sponsor, project title, city, county, receiving agency, appropriation ID and law citation. Reports may be generated out of this database. For example, if a legislator wants to know which projects he or she funded in a particular span of time that were related to water and wastewater, LCS staff can produce a report detailing these projects.

2018 BONDING CAPACITY

As of December 6, 2017, the Department of Finance and Administration and other participants in the Consensus Revenue Estimating Group (CREG) forecast net senior severance tax bonding capacity at \$142.4 million for the coming year. In addition, the CREG forecast the availability of \$17.7 million in bonding capacity for water projects and \$8.8 million each for tribal infrastructure projects and colonias projects. General obligation bond capacity was forecast at \$165.4 million. It is anticipated that the forecasts will be updated prior to or during the upcoming legislative session.

This information bulletin does not represent a policy statement of the LCS or its staff. For more information, contact the LCS at (505) 986-4600.

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