



# NEW MEXICO LEGISLATIVE COUNCIL SERVICE INFORMATION BULLETIN NUMBER 42

LEGISLATIVE RESEARCH, POLICY & COMMITTEE SERVICES

NOVEMBER 2021

## CAPITAL OUTLAY: A PRIMER FOR 2022

The purpose of this information bulletin is to summarize and clarify the capital outlay project request process. Please call the Legislative Council Service (LCS) capital outlay staff at (505) 986-4600 if you need additional information.

### Capital Outlay Projects: From Wish List to Approved Legislation

Anyone can access the "Capital Outlay Request Form" and the "Capital Outlay Reauthorization Request Form" from the legislative website ([www.nmlegis.gov/Legislation/BillFinder/Capital\\_Outlay\\_Request\\_Forms](http://www.nmlegis.gov/Legislation/BillFinder/Capital_Outlay_Request_Forms)).

The information required to submit a capital project request is now collected online. To complete a request, click on the link to submit a capital outlay project request and follow the directions. Once the form has been completed online, requesters have the option to print a project summary. The LCS will transmit project requests to legislators electronically. By law, sponsorship information is confidential until capital outlay requests are introduced in the House or the Senate, and sponsor funding information remains confidential until 30 days after the end of the legislative session.

The form requests 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 state agencies to administer a project if an appropriation is made for that project.

The deadline to submit a capital outlay project request online for the 2022 regular legislative session is January 13, 2022. Legislators and the governor will receive a list of all projects that have been directed to them from the online site at the start of the legislative session. Requested projects will be posted online at the start of the legislative session. Legislators and the governor may use these lists to select their sponsored projects.

At the bill introduction deadline, Capital Outlay Requests (CORs or sponsored project lists) requested by legislators are introduced on the House or Senate floor. The CORs include all capital outlay projects requested by the sponsoring legislator and are posted online shortly after the bill introduction deadline.

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

### WHAT QUALIFIES FOR CAPITAL OUTLAY FUNDING?

*The Property Control Act defines a "capital outlay project" as the acquisition, improvement, alteration or reconstruction of assets of a long-term character that are intended to continue to be held or used, including land, buildings, machinery, furniture and equipment. A capital outlay project includes all proposed expenditures related to the entire undertaking.*

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;
- road construction and street improvements;
- park renovations and equipment purchases;
- water and wastewater system development and acequia improvements;
- 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.*

area of the state often communicate with each other to ensure that full funding is provided 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.

### 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 legislative website. Reauthorization request information is not collected online at this time. Completed forms must be emailed to the LCS by a legislator or printed, signed by a legislator and delivered to the LCS. Changes to previously approved appropriations typically include extending the expenditure period, expanding or altering the purpose of the appropriation or changing the agency that will administer the appropriation. The form leads users through the process of identifying the

original appropriation and outlining the needed changes.

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

#### **CAPITAL OUTLAY DEADLINES: 2022**

**January 13:** Deadline to submit capital outlay project requests online (3:00 p.m.)

**January 30:** Deadline for legislators to submit CORs and reauthorization requests to the LCS (3:00 p.m.)

**February 2:** COR introduction deadline (12:00 p.m.)

### **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 will post reports listing all of the capital outlay projects that have been requested through the online request site on the legislative website at the start of the legislative session. Requested projects will be listed by agency and by county. In accordance with New Mexico law, a sponsor's capital funding requests are not disclosed until 30 days after the end of the legislative session. Once capital projects are "introduced" in the form of each legislator's COR, those CORs are made public on the website. CORs 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. An explanation of how offsets work can be found at <https://www.nmlegis.gov/Sessions/InterimCommittees/PSCO/2020/PSCO%20Resource%20Booklet%202020.pdf>.

### **Historical Data on Capital Outlay**

The LCS maintains a historical database on capital outlay projects. The database 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 from 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 those projects.

#### **2022 BONDING CAPACITY**

In October 2021, net senior severance tax bonding capacity for capital outlay projects in 2022 was estimated at \$553.3 million. In addition, an estimated \$64.2 million in bonding capacity will be available for water projects recommended by the Water Trust Board, as well as \$32.1 million each for tribal infrastructure and colonias infrastructure projects. General obligation bonding capacity is estimated at \$244.5 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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