

1 SENATE BILL 136

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Pete Campos

5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO HIGHER EDUCATION; ENACTING THE HIGHER EDUCATION  
12 CAPITAL OUTLAY ACT; CREATING THE HIGHER EDUCATION CAPITAL  
13 OUTLAY COUNCIL AND THE HIGHER EDUCATION CAPITAL OUTLAY FUND;  
14 PROVIDING PROCEDURES FOR CORRECTING OUTSTANDING DEFICIENCIES AT  
15 STATE INSTITUTIONS; PROVIDING FOR THE ASSESSMENT,  
16 PRIORITIZATION AND FUNDING OF FUTURE CRITICAL CAPITAL OUTLAY  
17 PROJECTS; AUTHORIZING THE ISSUANCE OF SHORT-TERM SEVERANCE TAX  
18 BONDS; MAKING AN APPROPRIATION.

19  
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

21 SECTION 1. SHORT TITLE.--Sections 1 through 6 of this act  
22 may be cited as the "Higher Education Capital Outlay Act".

23 SECTION 2. DEFINITIONS.--As used in the Higher Education  
24 Capital Outlay Act:

25 A. "council" means the higher education capital

.183930.1

underscored material = new  
[bracketed material] = delete

underscoring material = new  
~~[bracketed material] = delete~~

1 outlay council;

2 B. "fund" means the higher education capital outlay  
3 fund; and

4 C. "institution" means a state educational  
5 institution confirmed by Article 12, Section 11 of the  
6 constitution of New Mexico or a two-year public post-secondary  
7 educational institution created pursuant to statute.

8 SECTION 3. HIGHER EDUCATION CAPITAL OUTLAY COUNCIL.--

9 A. The "higher education capital outlay council" is  
10 created, consisting of the following eleven members:

11 (1) the secretary of finance and  
12 administration or the secretary's designee;

13 (2) the governor or the governor's designee;

14 (3) the director of the legislative finance  
15 committee or the director's designee;

16 (4) the director of the legislative council  
17 service or the director's designee;

18 (5) the secretary of higher education or the  
19 secretary's designee;

20 (6) a representative of a four-year  
21 institution, appointed by the council of university presidents;

22 (7) a representative of a two-year  
23 institution, appointed by the New Mexico association of  
24 community colleges;

25 (8) two members appointed by the president pro

.183930.1

underscored material = new  
[bracketed material] = delete

1 tempore of the senate; and

2 (9) two members appointed by the speaker of  
3 the house of representatives.

4 B. The council shall review all applications for  
5 assistance from the fund and shall certify the approved  
6 applications for distribution of funds.

7 C. The council shall elect a chair from among its  
8 members and shall meet at the call of the chair.

9 SECTION 4. FUND CREATED.--The "higher education capital  
10 outlay fund" is created in the state treasury. The fund  
11 consists of appropriations, gifts, grants, donations and  
12 bequests made to the fund. The fund shall be administered by  
13 the department of finance and administration. Income from the  
14 fund shall be credited to the fund, and money in the fund shall  
15 not be transferred or revert to any other fund at the end of a  
16 fiscal year. Money in the fund is appropriated to the council  
17 for the purposes of making grants to institutions for capital  
18 outlay projects approved by the council. Expenditures shall be  
19 made on warrant of the secretary of finance and administration  
20 on vouchers signed by the chair of the council.

21 SECTION 5. OUTSTANDING DEFICIENCIES AT STATE  
22 INSTITUTIONS--CORRECTION.--

23 A. After reviewing existing five-year facilities  
24 plans and the facilities condition assessment for all  
25 institutions, the council, in conjunction with the higher

.183930.1

underscored material = new  
~~[bracketed material] = delete~~

1 education department, shall verify the assessed outstanding  
2 health, safety or infrastructure deficiencies and shall develop  
3 a plan to correct the deficiencies.

4 B. To the extent that money has been appropriated  
5 or is otherwise available in the fund for such purposes, the  
6 council may approve allocations from the fund to the applicable  
7 governing board for the purpose of correcting the deficiencies.

8 C. The council shall monitor the construction and  
9 establish such other guidelines and conditions as it deems  
10 necessary to ensure that the allocations from the fund pursuant  
11 to this section are expended in the most prudent manner  
12 possible and consistent with the original purpose.

13 SECTION 6. PROJECTS--APPLICATION--APPROVAL.--

14 A. After outstanding health, safety or  
15 infrastructure deficiencies, as identified in the facilities  
16 condition assessment and the five-year facilities plan, have  
17 been corrected pursuant to Section 5 of the Higher Education  
18 Capital Outlay Act, the council shall develop criteria for  
19 assessing the other critical capital outlay needs of each  
20 institution and for evaluating and prioritizing applications  
21 for grant assistance from the fund.

22 B. Applications for grant assistance from the fund  
23 shall be made by institutions to the council in accordance with  
24 the requirements of the council. The council shall require as  
25 a condition of application that an institution have a current

.183930.1

underscored material = new  
~~[bracketed material] = delete~~

1 five-year facilities plan.

2 C. Using the criteria developed pursuant to  
3 Subsection A of this section, the council shall evaluate  
4 applications and prioritize those projects most in need of  
5 grant assistance from the fund. To the extent that money in  
6 the fund is available, the council shall award grant assistance  
7 for those prioritized projects.

8 D. Notwithstanding provisions in the Higher  
9 Education Capital Outlay Act requiring application, evaluation  
10 or prioritization, nothing in that act shall be deemed to  
11 prevent the council from approving an allocation from the fund  
12 for a capital outlay project if needed to address an emergency  
13 situation at an institution in which the safety or health of  
14 students or employees is threatened. The council may establish  
15 a reserve in the fund for the purpose of making allocations  
16 pursuant to this subsection.

17 E. In awarding grant assistance, the council may  
18 require conditions and procedures necessary to ensure that the  
19 money is expended in the most prudent manner.

20 F. No later than December 15 of each year, the  
21 council shall prepare a report summarizing its activities  
22 during the previous fiscal year. The report shall describe in  
23 detail all projects funded, the progress of projects previously  
24 funded but not completed, the criteria used to evaluate,  
25 prioritize and fund projects and all other council actions.

.183930.1

underscored material = new  
[bracketed material] = delete

1 The report shall be submitted to the governor, the legislative  
2 finance committee and the legislature.

3 SECTION 7. SHORT-TERM SEVERANCE TAX BONDS--HIGHER

4 EDUCATION CAPITAL OUTLAY.--In addition to the bonds issued  
5 pursuant to Section 7-27-14 NMSA 1978 and notwithstanding the  
6 limitations of that section, in compliance with the Severance  
7 Tax Bonding Act, in fiscal year 2011, the state board of  
8 finance may issue and sell severance tax bonds with a term that  
9 does not extend beyond the fiscal year in which they are issued  
10 in an amount not exceeding ninety million dollars (\$90,000,000)  
11 when the higher education capital outlay council certifies by  
12 resolution the need for the issuance of the bonds. The  
13 proceeds from the sale of the bonds are appropriated to the  
14 higher education capital outlay fund for the correction of  
15 outstanding health, safety and infrastructure deficiencies at  
16 public post-secondary educational institutions pursuant to the  
17 Higher Education Capital Outlay Act; provided that no severance  
18 tax bonds shall be issued pursuant to this section:

19 A. until all other severance tax bonds and  
20 supplemental severance tax bonds to be issued in fiscal year  
21 2011 have been issued; and

22 B. unless the balance in the severance tax bonding  
23 fund as of the date that the bonds are issued is greater than  
24 the sum of:

25 (1) the debt service on the severance tax

.183930.1

underscored material = new  
~~[bracketed material] = delete~~

1 bonds to be issued pursuant to this section;

2 (2) the debt service scheduled to be paid  
3 during the remainder of the fiscal year on all outstanding  
4 severance tax bonds and supplemental severance tax bonds; and

5 (3) the amount necessary to meet all principal  
6 and interest payments on outstanding bonds payable from the  
7 severance tax bonding fund on the next two ensuing semiannual  
8 payment dates.