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SENATE BILL 293

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Pete Campos

AN ACT

RELATING TO PUBLIC MONEY; ENACTING THE CAPITAL OUTLAY PLANNING AND MONITORING ACT; INCREASING FISCAL AND PROGRAMMATIC SCRUTINY OF CAPITAL OUTLAY EXPENDITURES; CREATING THE CAPITAL OUTLAY PLANNING AND MONITORING DIVISION IN THE DEPARTMENT OF FINANCE AND ADMINISTRATION; PROVIDING POWERS AND DUTIES; MAKING TRANSFERS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

**SECTION 1.** [NEW MATERIAL] SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Capital Outlay Planning and Monitoring Act".

**SECTION 2.** [NEW MATERIAL] DEFINITIONS.--As used in the Capital Outlay Planning and Monitoring Act:

A. "capital project" means a project located in New

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1 Mexico that includes the acquisition, repair, alteration,  
2 demolition, renovation, construction or reconstruction of a  
3 public building or other public works owned by an eligible  
4 entity, including planning and design and professional  
5 engineering, surveying, architectural and landscape  
6 architectural services directly related to the capital project;  
7 purchase of rights of way or easements; purchase of land for a  
8 public building or other public works; site improvements to  
9 public property; purchase and installation of equipment of a  
10 long-term nature for a public building or other public works;  
11 purchase of furniture as part of a renovation or construction  
12 of a public building; purchase of motor vehicles or heavy  
13 equipment; and hardware and software for voice, radio, video  
14 and data communications;

15 B. "division" means the capital outlay planning and  
16 monitoring division of the department of finance and  
17 administration;

18 C. "eligible entity" means the state, a tribe or a  
19 political subdivision or agency of the state or a tribe; and

20 D. "tribe" means a federally recognized Indian  
21 nation, tribe or pueblo, or a subdivision or an agency of a  
22 federally recognized Indian nation, tribe or pueblo, located  
23 wholly or partially within New Mexico.

24 SECTION 3. [NEW MATERIAL] CAPITAL OUTLAY PLANNING AND  
25 MONITORING DIVISION CREATED--POWERS AND DUTIES.--

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1           A. The "capital outlay planning and monitoring  
2 division" is created in the department of finance and  
3 administration. The division shall:  
4           (1) direct capital project planning for the  
5 executive branch, for state institutions and for local  
6 governments that seek state funding for capital projects,  
7 either directly or through coordination with other responsible  
8 state and local agencies;  
9           (2) coordinate with the appropriate state and  
10 federal agencies that provide capital project funding for local  
11 governments, other eligible entities and rural areas;  
12           (3) work with state agencies, state  
13 institutions, local governments and the legislature to develop  
14 priorities for capital projects to be funded through the  
15 capital outlay process;  
16           (4) oversee, either directly or through other  
17 responsible state agencies, all state-funded capital projects  
18 to ensure timely execution of approved capital projects, proper  
19 expenditures of state funding and timely reversion of  
20 unexpended balances;  
21           (5) develop procedures to ensure current and  
22 complete accounting and reporting on state-funded capital  
23 projects;  
24           (6) maintain a central database on capital  
25 projects that includes the fiscal and programmatic status of

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1 each capital project;

2 (7) identify stagnant capital projects and  
3 recommend deauthorization to the legislature;

4 (8) identify capital projects that have been  
5 completed and fund balances that are available for reversion;

6 (9) provide training and assistance to  
7 eligible entities on planning, budgeting and administration of  
8 capital projects, including proper accounting and monitoring  
9 and completion of capital projects within statutory deadlines  
10 and the reversion of unexpended funds as required by law;

11 (10) work with the board of finance division  
12 of the department of finance and administration to ensure that  
13 capital projects authorized by the legislature are properly  
14 certified for the issuance of bonds and to ensure that capital  
15 projects proceed in a timely manner as required in the  
16 appropriating legislation and meet federal and state  
17 requirements; and

18 (11) provide capital outlay project  
19 information required by the legislative council service to  
20 create capital outlay legislation.

21 B. The division may conduct compliance and  
22 performance audits of capital projects and may coordinate those  
23 audits with the financial audits conducted by the state auditor  
24 or other independent auditor.

25 C. All state agencies, local governments,

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1 institutions and instrumentalities shall assist and cooperate  
2 with the division as required for the division to carry out its  
3 duties.

4 D. The division shall promulgate rules necessary  
5 for the administration of the Capital Outlay Planning and  
6 Monitoring Act.

7 SECTION 4. [NEW MATERIAL] STATE CAPITAL IMPROVEMENTS  
8 PLAN.--The division shall prepare and annually update a  
9 five-year "state capital improvements plan" that details the  
10 capital projects recommended to be undertaken by eligible  
11 entities with state aid or under state regulation. The plan  
12 shall:

13 A. include an economic forecast and a discussion of  
14 economic activities that bear on the need for state or local  
15 infrastructure;

16 B. include a description of outstanding capital  
17 projects being funded with state money, their estimated  
18 completion date, their initial cost, their estimated completion  
19 cost and their estimated operational costs for the first five  
20 years;

21 C. classify capital projects with respect to  
22 urgency and need for realization;

23 D. recommend a time sequence for construction or  
24 purchase of specific capital projects;

25 E. contain an estimated cost of each capital

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1 project, as well as the probable operating and maintenance  
2 costs of each project;

3 F. identify any revenue that will be generated by a  
4 capital project;

5 G. identify existing or additional sources of funds  
6 needed for construction and operation of each capital project;

7 H. identify the eligible entity that owns a capital  
8 project; and

9 I. provide other information for any capital  
10 project or for the state capital improvements plan as  
11 determined by the division.

12 SECTION 5. [NEW MATERIAL] CAPITAL PROJECT REQUESTS--  
13 GUIDELINES--INFRASTRUCTURE CAPITAL IMPROVEMENTS PLANS--  
14 SUBMISSION TO DIVISION.--

15 A. By January 15 of each year, the division shall  
16 publish capital project guidelines to be followed by eligible  
17 entities that plan to seek funding for any capital project in  
18 the next year's legislative session. The guidelines shall also  
19 identify those provisions that a tribe is required to follow in  
20 seeking funding for a capital project.

21 B. The guidelines shall include provisions to guide  
22 state agencies that review capital project requests or  
23 infrastructure capital improvements plans from eligible  
24 entities. The state capital improvements plan and each local  
25 government's infrastructure capital improvements plan shall be

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1 updated each year.

2 C. The guidelines shall include:

3 (1) a requirement that a local government  
4 requesting state capital outlay funds is only eligible for  
5 funding if it has a completed current audit or has submitted  
6 written status reports by the deadlines imposed by the state  
7 auditor until compliance with the Audit Act is achieved;

8 (2) a requirement that a local government be  
9 current on its budget and quarterly report submissions to the  
10 local government division of the department of finance and  
11 administration;

12 (3) a requirement for local government  
13 infrastructure capital improvements plans to be submitted to  
14 appropriate state agencies;

15 (4) requirements for analyzing immediate and  
16 future needs of the state, regions of the state and localities;  
17 and

18 (5) requirements for analyzing requests in  
19 light of:

20 (a) critical needs of the state and  
21 local governments, including health and safety needs;

22 (b) the ability of the local government  
23 to provide matching funds for the capital project;

24 (c) the availability of other funding  
25 sources for the capital project;

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1 (d) the capital project's priority on  
2 either the state capital improvements plan or a local  
3 government's infrastructure capital improvements plan;

4 (e) the ability to phase the capital  
5 project, if necessary, and the availability of funding to  
6 complete at least one full, functional capital project phase;

7 (f) the ability of the eligible entity  
8 to provide for the operation and maintenance of the capital  
9 project;

10 (g) the expected useful life of the  
11 capital project;

12 (h) the available alternatives to the  
13 capital project as requested;

14 (i) consideration of whether a  
15 renovation project will forestall substantial capital outlay  
16 costs in the short and long terms;

17 (j) the most appropriate funding sources  
18 for types of capital projects; and

19 (k) other considerations as determined  
20 by the division.

21 D. By May 1 of each year, all infrastructure  
22 capital improvements plans shall be submitted as follows:

23 (1) local government or regional plans that  
24 are not otherwise submitted to another state agency are due to  
25 the local government division of the department of finance and

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1 administration;

2 (2) water and wastewater plans are due to the  
3 department of environment;

4 (3) street, road and highway plans are due to  
5 the department of transportation;

6 (4) area agency on aging or local aging  
7 program plans are due to the aging and long-term services  
8 department;

9 (5) public post-secondary educational  
10 institution, special school and tribal college plans are due to  
11 the higher education department;

12 (6) state museum, state monument and historic  
13 site plans are due to the cultural affairs department;

14 (7) state agency plans for state agencies  
15 under the jurisdiction of the facilities management division of  
16 the general services department are due to the facilities  
17 management division;

18 (8) state and local government plans that are  
19 part of master plans approved by the capitol buildings planning  
20 commission are due to the capitol buildings planning  
21 commission; and

22 (9) capital improvements plans for the New  
23 Mexico state fair, state parks division of the energy, minerals  
24 and natural resources department, state armory board, tribal  
25 infrastructure board, colonias infrastructure board, water

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1 trust board, judicial branch and any other capital improvements  
2 plans or capital project requests that are not specifically  
3 assigned to another state agency are due to the division.

4 E. All state agencies that are responsible for  
5 reviewing capital project requests shall submit their  
6 recommendations to the division by July 1 of the year prior to  
7 the year in which funding is sought. For local government  
8 projects, the recommendations shall include comprehensive  
9 analysis of the local government's capacity and effort to fund  
10 the requested capital project and its ability to operate the  
11 capital project, if applicable.

12 F. The division shall publish the annual state  
13 capital improvements plan, an abstract of which shall be  
14 included in the executive budget recommendations for the  
15 following fiscal year.

16 SECTION 6. [NEW MATERIAL] REPORTS.--Every state agency  
17 responsible for capital projects shall file electronic  
18 quarterly status reports with the division on appropriations  
19 and expenditures. Every recipient of a state-funded capital  
20 project shall file electronic monthly status reports with the  
21 division on status of appropriation and expenditures.

22 SECTION 7. Section 9-6-3 NMSA 1978 (being Laws 1977,  
23 Chapter 247, Section 3, as amended) is amended to read:

24 "9-6-3. DEPARTMENT OF FINANCE AND ADMINISTRATION--  
25 CREATION--TRANSFER AND MERGER OF DIVISION FUNCTIONS--MERGER AND

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1 CREATION OF DIVISIONS.--

2 A. The "department of finance and administration"  
3 is created. The department shall consist of those divisions  
4 created by law or executive order, as modified by executive  
5 order pursuant to Subsection C of this section, including [~~but~~  
6 ~~not limited to~~]:

- 7 (1) the board of finance division;
- 8 (2) the financial control division;
- 9 (3) the local government division;
- 10 (4) the management and contracts review  
11 division; [~~and~~
- 12 (5) the state budget division; and
- 13 (6) the capital outlay planning and monitoring  
14 division.

15 B. The secretary is empowered to organize the  
16 department and the divisions thereof specified in Subsection A  
17 of this section and may transfer or merge functions between  
18 divisions in the interest of efficiency and economy.

19 C. The governor is empowered to merge divisions of  
20 the department or to create additional divisions by executive  
21 order in the interest of efficiency and economy."

22 SECTION 8. Section 9-6-5.1 NMSA 1978 (being Laws 1983,  
23 Chapter 296, Section 7) is amended to read:

24 "9-6-5.1. PLANNING POWERS AND DUTIES OF SECRETARY OF  
25 FINANCE AND ADMINISTRATION.--The secretary of [~~the department~~

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1 ~~of~~] finance and administration, in addition to the other powers  
2 and duties conferred:

3 A. shall review federal grant applications and  
4 provide management assistance;

5 B. shall coordinate, in accordance with directives  
6 from the governor's office of policy and planning, state agency  
7 plans for economic, natural resource, energy resource and human  
8 resource development;

9 C. shall provide aid to planning and development  
10 districts in developing grant proposals and cooperate with  
11 other local entities in developing grant proposals;

12 D. shall acquire, study and review all plans for  
13 capital projects proposed by state agencies and render advice  
14 on the plans. The secretary shall maintain long-range  
15 estimates and plans for capital projects and develop standards  
16 for measuring the need for and utility of proposed projects;

17 E. may contract for, receive and ~~[utilize]~~ use any  
18 grants or other financial assistance made available by the  
19 United States government or by any other source, public or  
20 private;

21 F. may provide planning and funding assistance to  
22 units of local government, council of government organizations,  
23 Indian tribal governments with tribal lands situated wholly or  
24 partially within New Mexico and ~~[to]~~ nonprofit entities having  
25 for their purpose local, regional or community betterment. The

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1 secretary, incident to any such programs, may enter into  
2 contracts and agreements with such units of local government,  
3 council of government organizations, Indian tribal governments,  
4 nonprofit entities and the federal government and may  
5 participate in or receive aid from any federal or private  
6 program in relation to such a planning program or assistance;

7 G. shall confer with the state budget division [~~of~~  
8 ~~the department of finance and administration~~] and the capital  
9 outlay planning and monitoring division in developing  
10 comprehensive plans to assure coordination of planning and  
11 budgeting functions;

12 [~~H. shall coordinate the state clearinghouse review~~  
13 ~~process;~~

14 [~~I. shall develop a status of the state report;~~

15 [~~J. shall review and coordinate comment by state~~  
16 ~~agencies on draft environmental impact statements;~~

17 ~~K.]~~ H. shall provide community development block  
18 grant technical assistance to local governments;

19 [~~L.]~~ I. shall administer, in consultation with and  
20 upon advice and direction from the community development block  
21 grant policy committee, the program for the state community  
22 development block grant program;

23 [~~M. shall serve as staff to the New Mexico~~  
24 ~~association of regional councils;~~

25 N. shall maintain a state planning library;] and

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1           [~~θ-~~] J. shall provide planning assistance to county  
2 and multi-county districts relative to application by such  
3 districts for financial assistance and for regional plan  
4 development."

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

13           **SECTION 10. REPEAL.--**Section 6-4-1 NMSA 1978 (being Laws  
14 1975, Chapter 282, Section 3, as amended) is repealed.

15           **SECTION 11. EFFECTIVE DATE.--**The effective date of the  
16 provisions of this act is July 1, 2016.