

1 SENATE BILL 479

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO THE LEGISLATURE; ENACTING THE CAPITAL OUTLAY REFORM
12 ACT; CREATING THE CAPITAL OUTLAY COUNCIL TO OVERSEE, ADVISE AND
13 PRESCRIBE REQUIREMENTS FOR THE CAPITAL OUTLAY PROCESS;
14 ESTABLISHING REQUIREMENTS FOR CAPITAL OUTLAY FUNDS; CREATING
15 THE CAPITAL OUTLAY OVERSIGHT AUTHORITY TO SERVE THE COUNCIL AND
16 ADMINISTER THE CAPITAL OUTLAY PROCESS; MAKING AN APPROPRIATION.

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

19 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
20 cited as the "Capital Outlay Reform Act".

21 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
22 Capital Outlay Reform Act:

23 A. "authority" means the capital outlay oversight
24 authority;

25 B. "capital funds" means capital outlay funds

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1 appropriated by the legislature;

2 C. "council" means the capital outlay council; and

3 D. "eligible entity" means an entity awarded
4 capital funds by the legislature.

5 SECTION 3. [NEW MATERIAL] CAPITAL OUTLAY PROJECTS--GRANT
6 ASSISTANCE--APPLICATION--CRITERIA.--

7 A. Applications for capital outlay assistance,
8 approval of applications and prioritization of projects for
9 recommendation to the legislature for funding shall be
10 conducted pursuant to the Capital Outlay Reform Act.

11 B. The council shall establish criteria for capital
12 outlay projects to receive capital funds pursuant to the
13 Capital Outlay Reform Act that shall consider:

14 (1) the feasibility of using the design, build
15 and financing arrangements;

16 (2) the use of alternative, more durable
17 construction materials that may reduce long-term operating
18 costs;

19 (3) whether a concept promotes efficient and
20 flexible utilization of space; and

21 (4) whether any other financing or
22 construction concept may maximize the dollar effect of the
23 capital funds.

24 C. No application for capital funds shall be
25 approved unless the council determines that:

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1 (1) the project is needed and included in the
2 entity's five-year infrastructure and capital improvement plan
3 among its top three priorities;

4 (2) the entity has used any past capital funds
5 in a prudent manner;

6 (3) the entity has obtained insurance for
7 buildings involved in projects for which the entity is
8 requesting capital funds;

9 (4) the entity has submitted a five-year
10 facilities plan that includes workload projections and a
11 current preventive maintenance plan;

12 (5) the entity is willing and able to pay any
13 portion of the total cost of the capital outlay project that is
14 not funded with capital funds;

15 (6) the entity has agreed in writing to comply
16 with any reporting requirements or conditions imposed by the
17 state;

18 (7) the project reduces health or safety
19 hazards or provides key infrastructure for economic
20 development;

21 (8) the project's cost and the amount
22 requested are based on an estimate provided by a qualified
23 professional;

24 (9) land, property, easements or rights of way
25 necessary to begin construction have been acquired;

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1 (10) the requested capital funds can fully
2 fund the project or an operational phase;

3 (11) funding for the project cannot be secured
4 from another source; and

5 (12) the entity has committed money to the
6 project from a local revenue source.

7 D. In order to encourage private capital investment
8 in the construction of public facilities, a capital outlay
9 application for a purchase of a privately owned facility by an
10 entity that currently uses the facility may be eligible for
11 capital funds if the council finds that, in addition to meeting
12 all other criteria and requirements, the facility equals or
13 exceeds the statewide building standards for facilities.

14 E. The council shall develop building standards for
15 public facilities and shall promulgate rules as necessary to
16 carry out the provisions of the Capital Outlay Reform Act.

17 F. No later than December 15 of each year, the
18 council shall prepare a report summarizing its activities
19 during the previous fiscal year. The report shall describe in
20 detail all projects approved, the progress of projects
21 previously funded but not completed, projects in noncompliance,
22 the criteria used to prioritize funding and other council
23 action. The report shall be submitted to the governor, the
24 department of finance and administration, the legislative
25 finance committee and both houses of the legislature.

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1 SECTION 4. [NEW MATERIAL] CAPITAL OUTLAY COUNCIL DUTIES--

2 ASSISTANCE AND OVERSIGHT.--The council shall:

3 A. assist applicants with identifying critical
4 capital outlay needs and preparing grant applications;

5 B. establish criteria for a project to be eligible
6 to receive capital funds;

7 C. collect, review and investigate applications for
8 capital funds;

9 D. recommend projects for approval;

10 E. assist eligible entities with implementing
11 projects, including preparing requests for bids or proposals,
12 contract negotiations and contract implementation;

13 F. help eligible entities that are not large enough
14 to maintain their own construction management staff with cost-
15 saving measures and efficiencies;

16 G. establish reporting requirements and conditions
17 on capital funds to ensure that grants are expended in a most
18 prudent manner and consistent with the original purpose for
19 which they were made. The council, in order to ensure
20 compliance with the provisions of the Capital Outlay Reform
21 Act, may:

22 (1) during normal business hours and with
23 notice, access the premises of a project and review non-
24 privileged documentation relating to a project;

25 (2) withhold capital funds available for a

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1 project; and

2 (3) take over the direct administration of a
3 project if a project is repeatedly in substantial noncompliance
4 with a reporting requirement or condition; and

5 H. prescribe the use of standardized construction
6 documents and a standardized process for change orders.

7 SECTION 5. [NEW MATERIAL] CAPITAL OUTLAY COUNCIL
8 CREATED--ORGANIZATION--DUTIES.--

9 A. The "capital outlay council" is created as an
10 interim body of the legislative branch to oversee, advise and
11 design the capital outlay assistance process and direct the
12 authority in helping to administer it. The council is composed
13 of the:

14 (1) secretary of finance and administration or
15 the secretary's designee;

16 (2) president pro tempore of the senate or the
17 president pro tempore's designee;

18 (3) minority floor leader of the senate or the
19 minority floor leader's designee;

20 (4) speaker of the house of representatives or
21 the speaker's designee;

22 (5) minority floor leader of the house of
23 representatives or the minority floor leader's designee;

24 (6) executive director of the New Mexico
25 municipal league or the executive director's designee; and

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1 (7) executive director of the New Mexico
2 association of counties or the executive director's designee.

3 B. The council shall elect a chair from among the
4 members. The council shall meet at the call of the chair.

5 C. Members of the council shall not be compensated,
6 but they shall receive for their service as members of the
7 council per diem and mileage as provided in the Per Diem and
8 Mileage Act.

9 SECTION 6. [NEW MATERIAL] CAPITAL OUTLAY OVERSIGHT
10 AUTHORITY--CREATION--POWERS AND DUTIES.--

11 A. The "capital outlay oversight authority" is
12 created under the supervision of the council. The authority
13 shall be headed by a director, selected by the council, who
14 shall have at least five years of experience in construction,
15 architecture or project management. The director may hire up
16 to two deputies with the approval of the council and shall
17 employ or contract with such technical and administrative
18 personnel as are necessary to carry out the provisions of this
19 section. The director, deputies and employees of the authority
20 shall be exempt from the provisions of the Personnel Act.

21 B. The authority shall:

22 (1) serve as staff to the council and execute
23 the tasks and responsibilities assigned by the council;

24 (2) provide assistance and oversight of
25 projects required by the Capital Outlay Reform Act;

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- 1 (3) assist eligible entities with:
- 2 (a) developing and implementing
- 3 five-year facility plans and preventive maintenance plans;
- 4 (b) procuring architectural and
- 5 engineering services;
- 6 (c) managing and overseeing construction
- 7 activities;
- 8 (d) training programs; and
- 9 (e) analyzing and assessing an eligible
- 10 entity's space utilization options;
- 11 (4) conduct ongoing review of five-year
- 12 facility plans, preventive maintenance plans and performance;
- 13 (5) ensure that projects are in compliance
- 14 with applicable state codes or requirements, including building
- 15 codes;
- 16 (6) have access to the premises of a project
- 17 and any non-privileged documentation relating to the project
- 18 and conduct on-site inspections of a project and its related
- 19 documentation;
- 20 (7) recommend to the council:
- 21 (a) criteria for capital outlay projects
- 22 to receive capital funds;
- 23 (b) standards for prioritizing funding;
- 24 and
- 25 (c) building standards and ensure

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1 project compliance with building standards adopted by the
2 council; and

3 (8) make annual reports to the department of
4 finance and administration, the governor, the legislative
5 education study committee, the legislative finance committee
6 and the legislature.

7 SECTION 7. APPROPRIATION.--Two million five hundred
8 thousand dollars (\$2,500,000) is appropriated from the general
9 fund to the legislative council service for expenditure in
10 fiscal year 2024 and subsequent fiscal years to carry out the
11 provisions and purpose of the Capital Outlay Reform Act. Any
12 unexpended or unencumbered balance remaining at the end of a
13 fiscal year shall not revert to the general fund.