

LOCAL CAPITAL OUTLAY ISSUES AND SUGGESTED ACTIONS

PROBLEM STATEMENT:

Nationally, New Mexico has been ranked poorly for capital outlay management and processes and is the only state whose capital functions are not integrated with the operating budget. The executive has initiated executive orders and internal procedures to improve funding and oversight for state-owned facilities. However, safeguarding the state's limited resources and providing accountability for public funds, while at the same time meeting legislator's expectations for infrastructure funding requested by local entities and other constituents, remains a concern. Concerns have centered on the ineffective uses of state resources: unspent proceeds, incomplete projects, waste, and misuse. Options for consideration by the Legislature to improve the process for local projects including centralized planning, prioritizing, funding, oversight, and accountability are listed within this document.

CURRENT PROCESS ISSUES

- Lack of planning and prioritization of projects
- Infrastructure Capital Improvement Plans submitted to Department of Finance & Administration for local projects are voluntary rather than mandatory
- Infrastructure needs exceed state's resources causing inadequate funds to complete projects
- Lack of operational or maintenance funds at local level
- Local match or other funding sources not a requirement for state funding
- Inadequate reporting and oversight of funds and projects—accountability is dispersed “to everybody and nobody”
- Lack of coordination, sharing of capabilities, and leveraging of funds among levels of government (state, federal, quasi, and local entities)
- Complex or subjective eligibility criteria and varying application processes required by various programs, including varying funding cycles for state, federal, and other monies
- Statutory requirements using bond sources not enforced (projects not started within six months of bond issuance)
- Bond rating agencies have noted the absence of best practices
- Anti-donation issues delay issuance of bonds
- Reauthorizations not vetted to extend time for completing projects
- No established communication and timelines for consideration of projects by legislators and the governor
- Large volume of projects and inadequate staffing levels hinder oversight of projects

PROPOSED IMPROVEMENTS WITHOUT LEGISLATION

- Modify Legislative Council Service (LCS) database to include information for use during and after legislative session for use by state agencies and other political subdivisions to ensure bond certifications are sent to proper entities. (sponsorship will remain confidential)
- Modify current capital outlay request and reauthorization forms developed by LCS to assist legislators in obtaining more information related to projects. Examples of modifications may include questions for additional information such as:
 1. Is political subdivision acting as fiscal agent for the project in compliance with the State Audit Act?
 2. Is fiscal agent in compliance with annual budgeting and financial reporting and other requirements within Executive Order 2013-06 issued on May 2, 2013?
 3. As defined in the State Audit Act, which tier system does the entity fall under?
 4. If an audit is not required can grantee demonstrate it has adequate accounting methods to spend state grant funds responsibly?
 5. For reauthorizations, who will own the project upon completion, and is the owner in compliance with both state and executive audit requirements?
- Create interim committees, limited to legislative members and/or include a combination of executive and other representatives, for the purposes of reviewing and developing improvements to the capital outlay process for local projects. Examples are as follows:
 1. Post-session collaborative funds committee to review progress of outstanding state funded local projects, coordinate all applicable entities with access to other fund sources, and determine leveraging of additional funds for underfunded projects if needed;
 2. Capital outlay review committee for the purpose of developing a plan and process for local capital projects, including a method for prioritizing local projects and establishing methods for reporting and accountability; or
 3. Capital outlay process committee to review current processes such as those implemented by the Public School Capital Outlay Council and Public School Facilities Authority, the Department of Transportation, and other processes established in other states. Outcomes could determine recommendations to the full Legislature.

CHANGES BY ADOPTION OF LEGISLATIVE RULE

- Establish a two-year capital outlay cycle to provide vetting time to determine if projects are qualified and shovel ready. House and Senate rule would require the following:
 - All capital outlay requests for local projects shall be submitted in odd-numbered year, by end of 60 day session;
 - All local projects submitted during 60-day session would be reviewed by a legislative interim committee to determine need for additional technical

EXHIBIT B

information, project readiness, audit compliance, and other evaluation criteria identified;

- List of vetted projects developed and distributed to legislators and DFA before 30-day session convenes;
- During 30-day session (even numbered years) capital outlay bill is created from projects identified for funding from the projects that are listed by interim committee;
- State-owned facilities will be funded on an annual basis; and
- GO Bond projects will remain on a biennial basis as they are now.
- Require a uniform application for requesting state capital outlay funding that would demonstrate all funding sources available.

LEGISLATION ACTION BY BILL

- Adopt a Capital Outlay Budgeting Act that provides for:
 - Planning process for projects;
 - Assuring projects meet the anti-donation provisions of the state constitution;
 - Assuring grantees will accept responsibility for operating and maintaining projects;
 - Providing legislators and the executive with tools to evaluate and prioritize projects;
 - Developing appropriate and politically reasonable capital outlay standards and best practices;
 - Providing for timelines; and
 - Providing for centralized administration for tracking, accountability and timely reversions of the funds.
- Assign or charge a permanent committee, such as Legislative Finance Committee or Legislative Council Service or other statutorily created interim committee such as Revenue and Stabilization Tax Committee the duty of oversight and compliance with of fiscal and programmatic scrutiny of capital outlay projects and expenditures.
- Provide additional funding and staff for a permanent committee;
- Establish a standardized application process for awarding state capital outlay funds;
- Ensure coordination between the executive agency process, the Infrastructure Capital Outlay Improvement process, and the legislative process to identify and fund qualified necessary statewide or local government projects and provide for long- range planning of statewide and local infrastructure needs and to fully fund those needs;
- Provide a coordinated method with executive and federal agencies and other entities for identifying monies that can be leveraged for partially funded projects;
- Identify general fund or other appropriate funding sources to plan, design, engineer and obtain other necessary clearances for projects prior to funding from severance tax or general obligation bonds;
- Create a process for consolidating the administration and oversight of large water system projects identified through a process developed or approved by the Legislature; and
- Provide the necessary staff for oversight of activities required in the Capital Outlay Budgeting Act.