

"DRAFT" CAPITAL OUTLAY PLANNING AND MONITORING ACT

PURPOSE

- THE PURPOSE OF THE CAPITAL OUTLAY PLANNING AND MONITORING ACT IS TO CREATE A PLANNING AND REVIEW PROCESS FOR CAPITAL MUCH LIKE THE OPERATING BUDGET REVIEW PROCESS.
- IT ADDRESSES STATE, REGIONAL, AND LOCAL INFRASTRUCTURE NEEDS AND PROVIDES A METHOD OF ESTABLISHING PROJECT PRIORITIES AND OVERALL MANAGEMENT OF FUNDS FOR ALL CAPITAL PROJECTS REQUESTED FROM STATE SOURCES.
- IT COORDINATES CAPITAL PLANNING AMONG ALL ELIGIBLE ENTITIES SEEKING STATE FUNDS.
- IT PROVIDES A METHOD FOR ESTABLISHING PROJECT PRIORITIES AND MANAGEMENT OF STATE FUNDS FOR ALL CAPITAL PROJECTS FUNDED WITH STATE MONEY.
- IT PROVIDES THE GOVERNOR AND THE LEGISLATURE WITH TECHNICAL ASSISTANCE TO AID IN MAKING INFORMED CAPITAL APPROPRIATION DECISIONS.

DEVELOPMENT OF FIVE-YEAR INFRASTRUCTURE CAPITAL IMPROVEMENT PLAN

- CREATES THE CAPITAL OUTLAY PLANNING COUNCIL TO OVERSEE THE DEVELOPMENT OF THE CAPITAL IMPROVEMENTS PLAN
 - MEMBERS OF THE COUNCIL, CHAIRED BY THE SECRETARY OF DFA, INCLUDES REPRESENTATIVES OF STATE AGENCIES AND OTHER ENTITIES WITH RESPONSIBILITIES FOR OVERSEEING CAPITAL PROJECTS
 - THE COUNCIL MEMBERSHIP INCLUDES THE DIRECTOR OF THE LCS AND LFC TO ENSURE REPRESENTATION OF THE LEGISLATURE
- CREATES A CAPITAL OUTLAY PLANNING AND MONITORING DIVISION WITHIN DFA
 - THE DIVISION WILL STAFF THE CAPITAL OUTLAY CONCIL AND PREPARE AN ANNUAL UPDATE OF A 5-YEAR CAPITAL IMPROVEMENT PLAN.
- ALL CAPITAL PROJECT RECOMMENDATIONS OF THE EXECUTIVE SHALL BE BASED ON THE STATE CAPITAL IMPROVEMENTS PLAN.
- BEGINNING IN 2016 THE PLAN WILL BE PRESENTED ANNUALLY TO THE LEGISLATIVE FINANCE COMMITTEE.

IMPROVED FISCAL ACCOUNTABILITY AND MANAGEMENT SERVICES PROVIDED BY NEW DIVISION

- OVERSEE ALL STATE FUNDED PROJECTS
- DEVELOP PROCEDURES TO ENSURE CURRENT AND COMPLETE ACCOUNTING OF REPORTING

- MAINTAIN A CENTRAL DATA BASE AND ELECTRONIC QUARTERLY REPORTING
- WORK WITH BOARD OF FINANCE TO ENSURE AUTHORIZED PROJECTS PROCEED IN A TIMELY MANNER AND MEET FEDERAL AND STATE REQUIREMENTS.
- PROVIDE CAPITAL OUTLAY PROJECT INFORMATION REQUIRED BY THE LEGISLATIVE COUNCIL SERVICE TO CREATE CAPITAL OUTLAY LEGISLATION
- PROVIDES FOR DEVELOPMENT OF GUIDELINES TO ASSIST ENTITIES REQUESTING STATE FUNDS, INCLUDING REQUIRES CURRENT AUDIT OR REVIEW PLAN
- REQUIRES ALL ENTITIES REQUESTING CAPITAL OUTLAY REQUESTS TO SUBMIT THEIR PLANS TO THE DIVISION

APPROPRIATIONS

- \$1 MILLION IS APPROPRIATED FOR IMPLEMENTATION OF THE NEW CAPITAL OUTLAY MONITORING DIVISION
- \$200 THOUSAND IS APPROPRIATED TO THE STATE AUDITOR TO ENSURE COMPLIANCE WITH THE AUDIT REQUIREMENTS

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 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

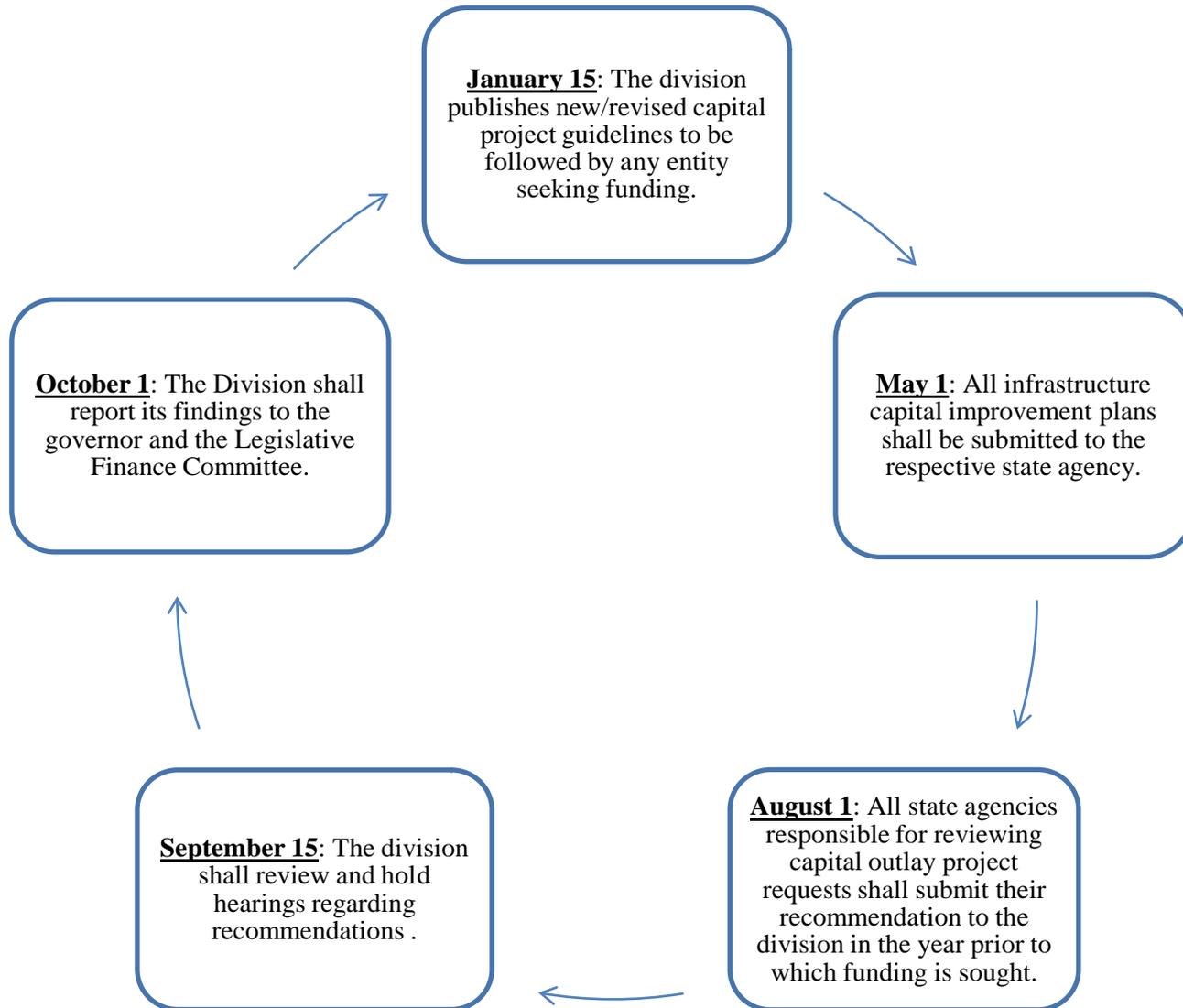
- GO Bond projects will remain on a biennial basis as they are now.
- Require a uniform application for requesting state capital outlay funding that would demonstrate all funding sources available.

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.

The Capital Outlay Planning and Monitoring Division: Annual Cycle Beginning 2016



FISCAL IMPACT REPORT

SPONSOR: Sen. Cisneros

DATE 12/18/13

202.195017.4

SHORT TITLE Capital Outlay Planning and Monitoring Act

Analysts: Kehoe, L.
Ray, P

APPROPRIATION (dollars in thousands)

Appropriations		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
	\$1,200.0	Nonrecurring	General Fund

SUMMARY

Synopsis of Bill

Bill draft .195017.4, Sections 1 through 7, creates the Capital Outlay Planning and Monitoring Act to develop a structure for all executive agencies and other entities receiving capital outlay funding to increase fiscal and programmatic oversight of the distribution, expenditure and reversion of the funds appropriated. The Capital Outlay Planning and Monitoring Act creates the Capital Outlay Planning and Monitoring Division (the division) within the Department of Finance and Administration. The following duties are specified for the division:

- (1) directing capital project planning for the executive branch, state institutions, and local governments seeking state funding for capital projects;
- (2) coordinate with NMFA, MFA, federal agencies and state agencies that

also provide capital project funding to state and local entities;

(3) develop priorities for capital outlay funding with other state agencies, state institutions, local governments and the Legislature;

(4) oversee, either directly or through other responsible state agencies, all state-funded capital projects to ensure timely execution, proper expenditure of state funds and timely reversion of capital projects;

(5) develop procedures for current and complete accounting and reporting on state funded projects;

(6) maintain a central database of capital projects including the fiscal and programmatic status of each capital project;

(7) identify stagnant projects and recommend deauthorization;

(8) identify capital projects that have been completed and fund balances to be reverted;

(9) provide training and assistance to eligible entities in planning, budgeting and administration of capital projects, including accounting and monitoring of projects;

(10) work with the Board of Finance to ensure proper certification of projects before bonds are issued;

(11) provide to the Legislative Council information needed to create a capital outlay bill; and

(12) staff the Capital Outlay Planning Council.

Performance and compliance audits of capital projects may be performed cooperatively or individually by the division and the Legislative Finance Committee. These audits may be coordinated with the financial audits conducted by the state auditor.

The division provides reports as required by appropriate legislative committees.

The draft bill also creates a Capital Outlay Planning Council, the members of which are from agencies that handle state and local government capital projects, including the Legislative Council Service and the Legislative Finance Committee. The secretary of the Department of Finance and Administration is the chair of the council. The council is charged with overseeing the development of the state capital improvements plan by the division.

A five-year state capital improvements plan is required to be developed by the division with the assistance of the Capital Outlay Planning Council. The capital improvements plan will help the executive to fund projects to completion and monitor the progress of funded projects. Executive capital outlay project requests must conform to needs set forth in the state capital improvements plan. The division is required to report to the Legislative Finance Committee annually beginning in 2016 on the status of the state capital improvements plan.

By January 15 annually, the division is required to publish the capital project guidelines for the year. Infrastructure capital must be submitted annually to various executive agencies administering certain categories of capital projects. By August 1 annually all of those agencies must submit recommendations of projects for which funding will be sought in the next legislative session. The division will review the recommendations and hold hearings by September 15 to gather any additional input needed regarding the recommendations. By October 1 each year, the division shall report to the Legislative Finance Committee proposed changes to the state capital improvements plan and provide a list of the recommended capital projects seeking funding. The division shall then publish

the annual state capital improvements plan. The executive shall publish an abstract of the state capital improvements plan in the executive budget recommendations for the upcoming fiscal year. The division shall provide copies of the state capital improvements plan to the Legislative Council Service and the Legislative Finance Committee.

All state agencies shall file reports with the division and the Legislative Finance Committee quarterly.

Sections 8 and 9 of the draft bill amend sections of current law. Section 8 amends Section 9-6-3 NMSA 1978 to add the Capital Outlay Planning and Monitoring Division as a new division within the Department of Finance and Administration. In Section 9 some changes are made to the powers and duties of the secretary of finance and administration to conform to the language of the Capital Outlay Planning and Monitoring Act. Temporary sections are set forth in the draft from Sections 10 through 13. Functions, money, appropriations and property of the Capital Outlay Projects Bureau of the State Budget Division of the Department of Finance and Administration are transferred to the Capital Outlay Planning and Monitoring Division of the Department of Finance and Administration in Section 10.

An appropriation of \$1.2 million is included in the draft in Section 12. The appropriation is allocated between the Department of Finance and Administration, \$1 million to the Department of Finance and Administration and \$200,000 to the Office of the State Auditor. Section 12 repeals Section 6-4-1 NMSA 1978, requiring that the Department of Finance and Administration and the General Services Department develop a four-year program of capital outlay projects to be undertaken. This duty is supplanted by requirements in the Capital Planning and

Monitoring Act. Section 13 sets an effective date for the entire bill of July 1, 2014.

In general, the draft bill addresses many of the issues that the National Association of State Budget Officers identifies as good practices for quality capital budgeting that have been lacking in New Mexico's capital outlay process, causing the state to be ranked poorly in national rankings in the area of planning and the distribution of capital funding.

FISCAL IMPLICATIONS

The appropriation of \$1.2 million contained in this bill is a nonrecurring appropriation for expenditure in FY 2015, reverting to the general fund at the end of that fiscal year. One million dollars (\$1,000,000) of the appropriation is to get the capital outlay structure outlined in the bill operational and to provide funding as needed to develop the five-year state capital outlay plan. Additional staff will be necessary to achieve the level of outreach and monitoring in the Capital Outlay Planning and Monitoring Act, and to provide the necessary training for state agencies and local governments, as well as to staff the Capital Outlay Planning Council. A recurring appropriation through the General Appropriation Act will be needed in future years to fund and staff the Capital Outlay Planning and Monitoring Division and the Executive Capital Planning Committee at a level to be determined by future Legislatures. Two hundred thousand dollars (\$200,000) of the appropriation will go to the state auditor to defer the costs of providing audits for those communities in New Mexico that are unable to fund their own audits due to circumstances beyond their control, such as an annual budget that is far too small to allow for an audit to be completed and allow the political subdivision to provide even basic necessary governmental services.

SIGNIFICANT ISSUES

Infrastructure needs for both state and local projects continue to grow and require more resources than the state can afford. Over the years, the executive and legislators have discussed the need to fund projects with adequate planning, a method for establishing project priorities and overall management of state funds for all capital projects funded with state money. Concerns have centered on the ineffective uses of state resources, unspent proceeds, incomplete projects, waste and misuse.

The State Board of Finance has noted that “it has become common practice to ignore critical regional and statewide infrastructure needs” and for money to be spent on projects that are not well vetted and poorly planned. The Board of Finance has also alluded to the practice of partially funding projects which delays the completion and incurs added costs that would not have been necessary if the project had been fully funded in the first year of funding. Noted was the need for identifiable sources of funding for future phases of projects and also phases that can stand alone when completed if future money is not available. Another point made by the Board of Finance was the need to ensure that local governments are requesting money for projects that are “truly needed and the community has the resources to protect the asset for future generations”. Finally noted was the need to target scarce capital funds “for projects that will have a multiplier effect on their regional or statewide economy.”