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HOUSE BILL 307

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

INTRODUCED BY

Zachary J. Cook and Carlos R. Cisneros

AN ACT

RELATING TO CAPITAL EXPENDITURES; ENACTING THE CAPITAL OUTLAY REFORM ACT; CREATING THE CAPITAL PROJECTS PLANNING COUNCIL; CREATING THE CAPITAL PLANNING AND ASSISTANCE DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION; PROVIDING POWERS AND DUTIES; REQUIRING A MULTIYEAR STATEWIDE CAPITAL IMPROVEMENTS PLAN WITH ANNUAL UPDATES; CREATING THE LEGISLATIVE CAPITAL OUTLAY OVERSIGHT COMMITTEE; 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] CAPITAL OUTLAY OVERSIGHT COMMITTEE--CREATED--MEMBERSHIP--STAFF--SUBCOMMITTEES.--**

A. The "capital outlay oversight committee" is created as a permanent joint interim legislative committee and consists of eighteen members as follows:

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1                   (1) nine members of the house of  
2 representatives appointed by the New Mexico legislative  
3 council; and

4                   (2) nine members of the senate appointed by  
5 the New Mexico legislative council.

6                   B. The New Mexico legislative council shall name  
7 knowledgeable public nonvoting advisory members to the  
8 committee, including the executive directors of the New Mexico  
9 municipal league and the New Mexico association of counties.

10                  C. Legislative members of the committee shall be  
11 appointed from each house so as to give the political parties  
12 having the most members in each house the same total  
13 proportionate representation on the committee as prevails in  
14 that house; provided that in the computation, major fractions  
15 shall be counted as whole numbers and in no event shall either  
16 of the two major parties have less than one member from each  
17 house. A member may be removed from the committee by the New  
18 Mexico legislative council for nonattendance according to New  
19 Mexico legislative council policy.

20                  D. Except for initial appointments, the members of  
21 the committee shall serve for terms of two years or less  
22 expiring on the first day of the regular session held in  
23 odd-numbered years. A vacancy shall be filled for the  
24 remainder of the unexpired term in the same manner as the  
25 original appointment.

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1           E. The chair of the committee shall rotate between  
2 the two houses of the legislature, and for the initial interim  
3 and the fifty-third legislature, the chairperson shall be a  
4 senate member and the vice chairperson shall be a house member.

5           F. No action shall be taken by the committee if a  
6 majority of the total membership from either house on the  
7 committee rejects such action.

8           G. The committee may create subcommittees. A  
9 subcommittee shall consist of at least one member from the  
10 house of representatives and one member from the senate, and at  
11 least one member of the minority party shall be a member of the  
12 subcommittee. All expenditures of a subcommittee shall be  
13 approved by the committee in advance of the expenditure, and  
14 the approval shall be shown in the minutes of the committee.

15           H. Staff for the committee shall be provided by the  
16 legislative council service and the legislative finance  
17 committee.

18           SECTION 2. [NEW MATERIAL] CAPITAL OUTLAY OVERSIGHT  
19 COMMITTEE--POWERS AND DUTIES.--

20           A. The capital outlay oversight committee shall:

21                   (1) monitor the work of the capital projects  
22 planning council so the committee is informed on the progress  
23 and elements of the multiyear statewide capital improvements  
24 plan each interim;

25                   (2) consult with the capital projects planning

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1 council and the capital planning and assistance division of the  
2 department of finance and administration on the development and  
3 adoption of the multiyear statewide capital improvements plan  
4 and its annual updates;

5 (3) establish broad objective criteria and  
6 identify general categories of infrastructure needs that the  
7 council shall use to prioritize capital projects in the  
8 statewide capital improvements plan;

9 (4) determine whether there will be a minimum  
10 dollar amount for capital projects included in the statewide  
11 capital improvements plan and set that minimum, if applicable;

12 (5) determine whether there will be a minimum  
13 dollar amount for capital projects for which bonds will be  
14 issued and set that minimum, if applicable;

15 (6) determine the amount of matching funds  
16 required for local government capital projects based on the  
17 financial capacity of the local government, which amount may be  
18 adjusted if the local government has been exemplary in  
19 implementing and maintaining a preventive maintenance program;  
20 and

21 (7) make recommendations to the legislature on  
22 funding sources for prioritized capital projects by the  
23 introduction of a capital outlay expenditures bill and, as  
24 appropriate, a general obligation bond bill; provided that no  
25 bonds shall be issued to fund a capital project with a useful

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1 life less than the date of maturity of the bond issued to fund  
2 the project.

3 B. The committee may direct its staff to research  
4 capital project requests received from legislators that are not  
5 part of the statewide capital improvements plan and may request  
6 the capital projects planning council to consider the requests  
7 for inclusion in the statewide capital improvements plan.

8 C. When developing the capital outlay expenditures  
9 bill for legislative consideration, the committee may remove a  
10 proposed capital project from the list provided by the capital  
11 projects planning council, but it shall not add a capital  
12 project. If the committee chooses to endorse a capital outlay  
13 expenditure that is not on the council's list, it shall do so  
14 by separate bill.

15 D. No capital project shall be recommended for  
16 funding through general obligation bonds or severance tax bonds  
17 unless it is included in the statewide capital improvements  
18 plan, except in the case of an emergency in which the health or  
19 safety of persons is at immediate risk or in which there is an  
20 imminent threat of significant property damage.

21 E. The following proposed capital projects are  
22 exempt from committee review, though not from consideration of  
23 the projects in relation to the statewide capital improvements  
24 plan:

25 (1) capital projects funded pursuant to the

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1 Public School Capital Outlay Act;

2 (2) capital projects funded only by loans or  
3 grants from the:

4 (a) New Mexico finance authority;

5 (b) water trust board;

6 (c) tribal infrastructure board; or

7 (d) colonias infrastructure board; and

8 (3) department of transportation projects.

9 SECTION 3. [NEW MATERIAL] SHORT TITLE.--Sections 3  
10 through 8 of this act may be cited as the "Capital Outlay  
11 Reform Act".

12 SECTION 4. [NEW MATERIAL] DEFINITIONS.--As used in the  
13 Capital Outlay Reform Act:

14 A. "capital project" means the acquisition, repair,  
15 alteration, demolition, renovation, construction,  
16 reconstruction, furnishing or equipping of a public building or  
17 other public works; motor vehicles and heavy equipment; and  
18 information technology owned by an eligible entity. "Capital  
19 project" includes planning, design and professional  
20 engineering, surveying, architectural and landscape  
21 architectural services directly related to the capital project;  
22 purchase of rights of way or easements; purchase of land or  
23 other property for a public building or other public works;  
24 purchase of water rights; site improvements to public property;  
25 purchase and installation of equipment of a long-term nature

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1 for a public building or other public works; and purchase of  
2 furniture and fixtures as part of the capital project;

3 B. "committee" means the capital outlay oversight  
4 committee;

5 C. "council" means the capital projects planning  
6 council;

7 D. "division" means the capital planning and  
8 assistance division of the department of finance and  
9 administration; and

10 E. "eligible entity" means an agency or institution  
11 of the state, a political subdivision or a federally recognized  
12 tribe or pueblo located wholly or partially in New Mexico;  
13 provided that a capital project shall be located wholly in New  
14 Mexico.

15 SECTION 5. [NEW MATERIAL] CAPITAL PROJECTS PLANNING  
16 COUNCIL--CREATED.--

17 A. The "capital projects planning council" is  
18 created, consisting of thirteen members as follows:

19 (1) the director of the legislative council  
20 service or the director's designee;

21 (2) the director of the legislative finance  
22 committee or the director's designee;

23 (3) the secretary of finance and  
24 administration or the secretary's designee;

25 (4) the secretary of general services or the

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1 secretary's designee;

2 (5) the chair of the board of the New Mexico  
3 finance authority;

4 (6) four public members, no more than two of  
5 whom shall be from the same political party, appointed jointly  
6 by the speaker and minority floor leader of the house of  
7 representatives and the president pro tempore and minority  
8 floor leader of the senate as follows:

9 (a) one member who has experience in the  
10 area of engineering;

11 (b) one member who has experience in the  
12 area of architecture;

13 (c) one member who has experience in the  
14 area of construction contracting or construction management of  
15 large commercial or public capital projects; and

16 (d) one member who has experience in the  
17 area of planning or complex financing of commercial or public  
18 capital projects; and

19 (7) four public members, no more than two of  
20 whom may be from the same political party, appointed by the  
21 governor as follows:

22 (a) one member who has experience in the  
23 area of engineering;

24 (b) one member who has experience in the  
25 area of architecture;

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1 (c) one member who has experience in the  
2 area of construction contraction or construction management of  
3 large commercial or public capital projects; and

4 (d) one member who works or has worked  
5 in the area of planning or complex financing of commercial or  
6 public capital projects.

7 B. The staff architect of the facilities management  
8 division of the general services department shall serve as a  
9 nonvoting advisory member of the council.

10 C. Public members shall comply with the provisions  
11 of the Governmental Conduct Act.

12 D. Public members shall be appointed within sixty  
13 days of the effective date of the Capital Outlay Reform Act.  
14 Members shall serve four-year terms and may be reappointed. A  
15 vacancy shall be filled for the remainder of the unexpired term  
16 in the same manner as the original appointment.

17 E. Public members are entitled to receive per diem  
18 and mileage as provided in the Per Diem and Mileage Act and  
19 shall receive no other compensation, perquisite or allowance  
20 for service as members of the council.

21 SECTION 6. [NEW MATERIAL] CAPITAL PLANNING AND ASSISTANCE  
22 DIVISION CREATED--POWERS AND DUTIES.--

23 A. The "capital planning and assistance division"  
24 is created in the department of finance and administration.

25 B. The division shall:

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- 1 (1) assist staff and the council;
- 2 (2) receive infrastructure capital
- 3 improvements plans from eligible entities and forward them to
- 4 the appropriate state agencies for review;
- 5 (3) receive agency recommendations on
- 6 infrastructure capital improvements plans and identified top
- 7 priorities from eligible entities, pursuant to Section 7 of the
- 8 Capital Outlay Reform Act and make recommendations to the
- 9 council on the development of the annual statewide capital
- 10 improvements plan;
- 11 (4) assist eligible entities with the
- 12 development and implementation of multiyear infrastructure
- 13 capital improvements plans and preventive maintenance plans,
- 14 which must be updated annually;
- 15 (5) provide training and assistance to
- 16 eligible entities on planning, budgeting and administration of
- 17 capital projects, including proper accounting and monitoring
- 18 and completion of capital projects within statutory deadlines
- 19 and the reversion of unexpended funds as required by law;
- 20 (6) develop procedures to ensure current and
- 21 complete accounting and reporting on state-funded capital
- 22 projects;
- 23 (7) maintain a central database on capital
- 24 projects that includes the fiscal and programmatic status of
- 25 each capital project;

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1 (8) oversee, either directly or through other  
2 responsible state agencies, all state-funded capital projects  
3 to facilitate timely execution of approved capital projects,  
4 proper expenditures of state funding and timely reversion of  
5 unexpended balances;

6 (9) identify capital projects that have been  
7 completed and require the responsible eligible entity to revert  
8 unexpended fund balances;

9 (10) identify stagnant capital projects and  
10 recommend deauthorization of bonding authority or reversion of  
11 appropriations;

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

20 (12) provide capital outlay project  
21 information required by the legislative council service to  
22 create capital outlay legislation.

23 C. The division may conduct compliance and  
24 performance audits and evaluations of capital projects.

25 D. When developing its recommendations to the

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1 council, the division and reviewing agencies shall coordinate  
2 with other planning and funding agencies and instrumentalities  
3 in the state, including the New Mexico finance authority, the  
4 water trust board, the tribal infrastructure board, the  
5 colonias infrastructure board and the public school capital  
6 outlay council and appropriate federal agencies that provide  
7 capital project funding for state and local governments and  
8 rural areas, to ensure that the council is considering all  
9 appropriate infrastructure improvement needs in the state and  
10 all funding sources and prioritizing those needs pursuant to  
11 committee criteria and scoring methodology.

12 E. Capital projects proposed for funding only by  
13 loans or grants from the New Mexico finance authority, the  
14 water trust board, the tribal infrastructure board or the  
15 colonias infrastructure board are exempt from the provisions of  
16 this section; provided, however, that each authority or board  
17 shall report to the division on what capital projects from  
18 eligible entities have been submitted to the authority or  
19 board, which capital projects are selected for funding, the  
20 amount of funding and whether the funding, if not for the  
21 entire capital project, is sufficient for an identifiable phase  
22 of the capital project. The authority and boards shall provide  
23 the division with annual and long-range capital plans for  
24 inclusion in the statewide capital improvements plan.

25 F. Department of transportation road projects are

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1 exempt from the provisions of this section, but the department  
2 of transportation shall provide the division with its annual  
3 and long-range state transportation infrastructure plans for  
4 inclusion in the statewide capital improvements plan.

5 G. The division and the committee shall coordinate  
6 their capital management efforts to minimize duplication of  
7 effort. All state agencies and instrumentalities and all  
8 eligible entities shall assist the division as required for the  
9 division to carry out its duties.

10 H. The division shall report to the council and the  
11 committee as required to keep the council and the committee  
12 apprised of the state of proposed, ongoing and completed  
13 capital projects.

14 SECTION 7. [NEW MATERIAL] STATEWIDE CAPITAL IMPROVEMENTS  
15 PLAN--CREATION--PLAN REQUIREMENTS--GUIDELINES--PLAN  
16 SUBMISSIONS--SCHEDULES.--

17 A. The council shall prepare, publish and annually  
18 update the "statewide capital improvements plan" that covers at  
19 least five years and is based on best practices and national  
20 standards for capital budgeting and that details the capital  
21 projects recommended to be undertaken by eligible entities with  
22 state aid or under state regulation. The statewide capital  
23 improvements plan shall:

24 (1) include an economic forecast and a  
25 discussion of economic activities that bear on the need for

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1 state or local infrastructure and how the plan has changed from  
2 the prior year's plan;

3 (2) include capital projects from across the  
4 state so that the overall plan is geographically diverse;

5 (3) prioritize capital projects for funding  
6 using the objective criteria determined by the committee;

7 (4) classify capital projects with respect to  
8 urgency and need for realization;

9 (5) recommend a time sequence for construction  
10 or purchase of specific capital projects;

11 (6) contain an estimated cost of each capital  
12 project, as well as the probable operating and maintenance  
13 costs of each capital project;

14 (7) identify any revenue that will be  
15 generated as a result of a capital project;

16 (8) identify existing or additional sources of  
17 funds needed for construction, operation and maintenance of  
18 each capital project;

19 (9) identify the eligible entity that will own  
20 a proposed capital project;

21 (10) include a description of outstanding  
22 capital projects being funded with state money, their estimated  
23 completion date, their initial cost, their estimated completion  
24 cost and their estimated operational costs for the first five  
25 years; and

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1 (11) provide other information for any capital  
2 project or for the statewide capital improvements plan as  
3 determined by the council or the committee.

4 B. All capital project recommendations of the  
5 council must be based on the statewide capital improvements  
6 plan.

7 C. An eligible entity is not eligible for a capital  
8 project unless it is current on its annual audit or has a plan  
9 approved by the state auditor for completion of its audit;  
10 provided that tribal entities must be in compliance with their  
11 tribal government's requirements that ensure fiscal  
12 responsibility. A local government is not eligible for state  
13 capital outlay funds unless it is also current on its budget  
14 and quarterly report submissions to the local government  
15 division of the department of finance and administration.

16 D. The council shall develop and approve capital  
17 project guidelines based on the committee's criteria. The  
18 guidelines shall be used by an eligible entity to submit a  
19 capital project for inclusion in the statewide capital  
20 improvements plan.

21 E. The guidelines shall include requirements for  
22 analyzing capital project requests in light of:

23 (1) critical needs of the eligible entity,  
24 including health and safety needs;

25 (2) the ability of the nonstate eligible

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1 entity to provide matching funds from sources other than the  
2 state for the capital project;

3 (3) the availability of other funding sources  
4 for the capital project, including funding from other planning  
5 and funding agencies and instrumentalities of the state and  
6 federal agencies;

7 (4) the ability to phase the capital project,  
8 if necessary, and the availability of funding to complete at  
9 least one full, functional capital project phase;

10 (5) the ability of the eligible entity to  
11 provide for the operation and maintenance of the capital  
12 project;

13 (6) the expected useful life of the capital  
14 project;

15 (7) the available alternatives to the capital  
16 project as requested;

17 (8) consideration of whether a renovation  
18 project would forestall substantial capital outlay costs in the  
19 short and long terms;

20 (9) the most appropriate funding sources for  
21 types of capital projects; and

22 (10) other considerations as determined by the  
23 council.

24 F. By May 1 of each year, infrastructure capital  
25 improvements plans of eligible entities for at least the

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1       ensuing five years shall be completed and submitted to the  
2       division, which shall forward all or a portion of the plans to  
3       the appropriate state agency for review and recommendations.

4               G. By July 1 of each year, all state agencies that  
5       are responsible for reviewing capital project requests pursuant  
6       to Subsections E and F of this section shall submit their  
7       recommendations to the division. For capital projects for  
8       nonstate eligible entities, the recommendations shall include a  
9       comprehensive analysis of the eligible entity's capacity and  
10      effort to fund the requested capital project from sources other  
11      than the state and its ability to operate and maintain the  
12      capital project, if applicable.

13              H. By November 1 of each year, the council shall  
14      submit the statewide capital improvements plan and the current  
15      priority list of capital projects to the committee. The  
16      priority list of capital projects shall be based on the  
17      objective criteria determined by the committee.

18              **SECTION 8. [NEW MATERIAL] REPORTS.**--Every eligible entity  
19      responsible for capital projects shall file electronic  
20      quarterly status reports on appropriations, encumbrances and  
21      expenditures with the division and the committee. An eligible  
22      entity shall not be considered for additional capital outlay  
23      funding if it is not current on its reports.

24              **SECTION 9.** Section 6-21-31 NMSA 1978 (being Laws 1992,  
25      Chapter 61, Section 31) is amended to read:

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1 "6-21-31. POWERS AND DUTIES.--The New Mexico finance  
2 authority oversight committee shall:

3 A. monitor and oversee the operation of the [~~New~~  
4 ~~Mexico finance~~] authority;

5 B. meet on a regular basis to receive and review  
6 reports from the authority on implementation of the provisions  
7 of the New Mexico Finance Authority Act and to review and  
8 approve regulations proposed for adoption pursuant to that act;

9 C. monitor and provide assistance and advice on the  
10 public project financing program of the [~~New Mexico finance~~]  
11 authority;

12 [~~D. oversee and monitor state and local government~~  
13 ~~capital planning and financing and take testimony from state~~  
14 ~~and local officials on state and local capital needs;~~

15 ~~E.]~~ D. provide advice and assistance to the [~~New~~  
16 ~~Mexico finance~~] authority and cooperate with the executive  
17 branch of state government and local governments on planning,  
18 setting priorities for and financing of state and local capital  
19 projects;

20 [~~F.]~~ E. undertake an ongoing examination of the  
21 statutes, constitutional provisions, regulations and court  
22 decisions governing state and local government capital  
23 financing in New Mexico; and

24 [~~G.]~~ F. report its findings and recommendations,  
25 including recommended legislation or necessary changes, to the

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1 governor and to each session of the legislature. The report  
2 and proposed legislation shall be made available on or before  
3 December 15 each year."

4 SECTION 10. Section 9-6-3 NMSA 1978 (being Laws 1977,  
5 Chapter 247, Section 3, as amended) is amended to read:

6 "9-6-3. DEPARTMENT OF FINANCE AND ADMINISTRATION--  
7 CREATION--TRANSFER AND MERGER OF DIVISION FUNCTIONS--MERGER AND  
8 CREATION OF DIVISIONS.--

9 A. The "department of finance and administration"  
10 is created. The department shall consist of those divisions  
11 created by law or executive order, as modified by executive  
12 order pursuant to Subsection C of this section, including but  
13 not limited to:

- 14 (1) the board of finance division;
- 15 (2) the financial control division;
- 16 (3) the local government division;
- 17 (4) the ~~[management and contracts review]~~  
18 capital planning and assistance division; and
- 19 (5) the state budget division.

20 B. The secretary of finance and administration is  
21 empowered to organize the department and the divisions thereof  
22 specified in Subsection A of this section and may transfer or  
23 merge functions between divisions in the interest of efficiency  
24 and economy.

25 C. The governor is empowered to merge divisions of

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1 the department or to create additional divisions by executive  
2 order in the interest of efficiency and economy."

3 SECTION 11. TEMPORARY PROVISION--TRANSFERS OF FUNCTIONS,  
4 MONEY, APPROPRIATIONS AND PROPERTY.--On the effective date of  
5 the provisions of this act, all functions, money,  
6 appropriations, records, furniture, equipment and other  
7 property of the capital projects bureau of the local government  
8 division of the department of finance and administration are  
9 transferred to the capital planning and assistance division of  
10 the department of finance and administration.

11 SECTION 12. REPEAL.--Section 6-4-1 NMSA 1978 (being Laws  
12 1975, Chapter 282, Section 3, as amended) is repealed.