



NEW MEXICO LEGISLATIVE COUNCIL SERVICE INFORMATION BULLETIN NUMBER 23

LEGISLATIVE RESEARCH, POLICY & COMMITTEE SERVICES

JANUARY 2013

CAPITAL OUTLAY: A PRIMER

The legislative process of selecting projects to receive capital outlay funding has sometimes been confusing to legislators and others interested in the process. The purpose of this information bulletin is to summarize and clarify the process. For any questions, please call the capital outlay staff at 986-4600.

Capital Outlay Projects: from Wish List to Approved Legislation

Anyone can access the capital outlay request form from the legislative web site (www.nmlegis.gov) by clicking on "Capital Outlay" on the left-hand side of the page and scrolling down to the form. Completed forms must be printed and signed by a legislator before being submitted to the Legislative Council Service (LCS).

The form asks for project details, including contact information, project cost, description, location and ownership. This information is necessary to draft the legislation. The remaining information requested may be used by the house or senate.

Legislators or those authorized by them can deliver completed, signed forms to the LCS for processing. Two copies of each form are required because one will be date-stamped for the legislator's records.

Once the legislative session gets rolling, legislators will each week be provided with a report showing all the capital outlay they have requested. The report contains the project description language, the entity that will receive funding, the project title and the total project cost. Legislators should check the language to be sure it is accurate.

At the bill introduction deadline, midway through the session, the LCS provides each legislator a final capital outlay certificate for numbering and introduction on the house or senate floor. These certificates contain all capital outlay projects requested by the sponsoring legislator.

During the second half of the legislative session, the LCS produces charts containing the project titles for every capital outlay project introduced by each legislator. At this stage, legislators from the same area of the state often communicate with each other to ensure that full funding is approved for a project. These "funding charts" must be

WHAT QUALIFIES FOR CAPITAL OUTLAY FUNDING?

Typical capital outlay projects include:

- *planning, designing, constructing, equipping and furnishing community centers, senior centers, fire stations, libraries, courthouses and other buildings;*
- *purchasing vehicles, such as for fire departments, senior centers or police departments;*
- *street improvements;*
- *park renovations or equipment;*
- *water, wastewater system and acequia improvements;*
- *improvements to existing buildings to comply with the Americans with Disabilities Act of 1990;*
- *construction or renovations to state institutions of higher education; and*
- *improvements or construction to buildings on Indian lands.*

WHAT DOES NOT QUALIFY?

Capital outlay funding cannot be used for operating expenses; salaries; materials and supplies; events, brochures, pamphlets and publications; and retroactive reimbursements of previous payments.

returned to the LCS by a specific deadline to ensure the legislation is processed before the end of the session.

Reauthorizations

A similar process is followed for processing requests to reauthorize funding approved during a previous session.

A "Capital Outlay Request (Reauthorization)" form is also available on the web site. Changes to previously approved funding typically include extending the expenditure period, expanding or altering the project's purpose, changing the agency that will administer the project and clarifying a purpose. The LCS needs as much information as possible about the original project (Department of Finance and Administration appropriation ID, current project balance, if the project was reauthorized before, and the original citation in the law for the project) to efficiently and accurately process the reauthorization request. The form will lead users through this process.

If a request for reauthorization cannot be processed for any reason, the LCS will notify the legislator and detail the reasons.

CAPITAL OUTLAY DEADLINES

February 11: Capital Outlay Request & Reauthorization Request Submission Deadline (by 5:00 p.m. to the LCS)

February 14: Capital Outlay Certificates Introduction Deadline

How Is Capital Outlay Funded?

Three main sources fund capital outlay projects: proceeds from severance tax bonds, nonrecurring revenue in the general fund and proceeds from general obligation bonds. The state of the economy drives the capacity of each. Because general obligation bonds are repaid through property taxes and have to be approved by the voters in a general election, money for these projects is only available in even-numbered years. Severance tax bonds are repaid with revenue from resources severed from the land, such as oil and gas.

Capital Outlay for Nonprofit Organizations

Money cannot be directly appropriated to a private organization. On the cover page of the capital outlay request form, requirements for nonprofit entities are delineated. The LCS requires that if the capital asset is to be used by a nonprofit entity, the requester needs to submit a written commitment from the state or a political subdivision that the state or political subdivision is or will be the owner of the asset and that the fiscal agent for the nonprofit entity will lease the asset to the nonprofit entity at fair market value and will ensure that the nonprofit entity maintains the asset. This written commitment should be submitted alongside the completed capital outlay request form to the LCS capital outlay staff.

The Local Economic Development Act (LEDA) and Capital Outlay

Much like the requirements for nonprofit entities, the requester of a capital outlay project that is an economic development project that represents a public-private partnership under the LEDA must also submit the local government's approval of the project. This is in accordance with the local government's ordinance adopted pursuant to that act that validates the local government's receipt of state funding for the project. The LCS capital outlay office will accept as evidence a letter from the local government that states its approval or a copy of the minutes from the meeting of the local governing body that approved the project.

Confidentiality

The LCS will not disclose the sponsorship of any capital outlay request unless the legislator gives permission to speak to others about the request. Once capital outlay

projects are requested and entered into the capital outlay database, the LCS produces charts of all projects that are available on the legislative web site. These charts show projects by agency and by county, but not by sponsor.

Once projects are "introduced" in the form of each legislator's capital outlay certificate, these certificates are made public on the web site.

Public School Capital Outlay

It is important to be aware that appropriating capital outlay funding for school districts may result in the districts having to absorb an offset from this appropriation. Because of the court challenge in 1998 by the Zuni Public School District (referred to as the *Zuni* lawsuit), which sought to ensure equalized funding for capital needs in school districts across the state, a standards-based capital outlay funding formula was established to correct inequities. Legislators can refer to Section 22-24-5 NMSA 1978 for statutory language that establishes this offset, which is different for each school district and charter school.

Historical Data on Capital Outlay

The LCS keeps a historical database on capital outlay. It serves as a research tool when legislators have questions about prior capital appropriations and assists the LCS capital outlay team in compiling data and ensuring accuracy when writing reauthorization language. All funded projects are in the database and can be searched by keyword, sponsor, project title, city, county, receiving agency, appropriation ID and law citation. Reports may be generated out of this database. For example, if a legislator wants to know which projects he or she funded in a particular span of time that were related to water and wastewater, the LCS staff could produce a report showing these projects, with all the accompanying data as described above.

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2013 BONDING CAPACITY

The Legislative Finance Committee forecasts severance tax bonding capacity for the 2013 legislative session at \$222 million. In addition, \$175 million is forecast for public school facility projects, \$33 million for Water Trust Board projects, \$17 million for colonias projects and another \$17 million for tribal infrastructure projects.

This information bulletin does not represent a policy statement of the Legislative Council Service or its staff. This information bulletin was written by Renée Gregorio. For more information, contact the Legislative Council Service at (505) 986-4600.