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SENATE BILL 162

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO PUBLIC MONEY; ENACTING THE CAPITAL OUTLAY PLANNING AND MONITORING ACT; INCREASING FISCAL AND PROGRAMMATIC SCRUTINY OF CAPITAL OUTLAY EXPENDITURES; REQUIRING COMPREHENSIVE FIVE-YEAR PLANS; CREATING THE CAPITAL OUTLAY PLANNING AND MONITORING DIVISION IN THE DEPARTMENT OF FINANCE AND ADMINISTRATION; PROVIDING POWERS AND DUTIES; CREATING THE CAPITAL OUTLAY PLANNING COUNCIL; MAKING TRANSFERS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Capital Outlay Planning and Monitoring Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Capital Outlay Planning and Monitoring Act:

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1           A. "capital project" means a project located in New  
2 Mexico that includes the acquisition, repair, alteration,  
3 demolition, renovation, construction or reconstruction of a  
4 public building or other public works owned by an eligible  
5 entity, including planning and design and professional  
6 engineering, surveying, architectural and landscape  
7 architectural services directly related to the capital project;  
8 purchase of rights of way or easements; purchase of land for a  
9 public building or other public works; purchase of water  
10 rights; site improvements to public property; purchase and  
11 installation of equipment of a long-term nature for a public  
12 building or other public works; purchase of furniture; purchase  
13 of motor vehicles or heavy equipment; and purchase of  
14 information technology;

15           B. "council" means the capital outlay planning  
16 council;

17           C. "division" means the capital outlay planning and  
18 monitoring division of the department of finance and  
19 administration;

20           D. "eligible entity" means the state, a tribe or a  
21 political subdivision or agency of the state or a tribe; and

22           E. "tribe" means a federally recognized Indian  
23 nation, tribe or pueblo, or a subdivision or an agency of a  
24 federally recognized Indian nation, tribe or pueblo, located  
25 wholly or partially within New Mexico.

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1           SECTION 3.   ~~[NEW MATERIAL]~~ CAPITAL OUTLAY PLANNING AND  
2 MONITORING DIVISION CREATED—POWERS AND DUTIES.--

3           A.   The "capital outlay planning and monitoring  
4 division" is created in the department of finance and  
5 administration.   The division shall:

6                   (1)   direct capital project planning for the  
7 executive branch, for state institutions and for local  
8 governments that seek state funding for capital projects,  
9 either directly or through coordination with other responsible  
10 state and local agencies;

11                   (2)   coordinate with the New Mexico finance  
12 authority, the New Mexico mortgage finance authority and  
13 federal agencies that provide capital project funding for local  
14 governments, other eligible entities and rural areas;

15                   (3)   work with state agencies, state  
16 institutions, local governments and the legislature to develop  
17 priorities for capital projects to be funded through the  
18 capital outlay process;

19                   (4)   oversee, either directly or through other  
20 responsible state agencies, all state-funded capital projects  
21 to ensure timely execution of approved capital projects, proper  
22 expenditures of state funding and timely reversion of  
23 unexpended balances;

24                   (5)   develop procedures to ensure current and  
25 complete accounting and reporting on state-funded capital

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1 projects;

2 (6) maintain a central database on capital  
3 projects that includes the fiscal and programmatic status of  
4 each capital project;

5 (7) identify stagnant capital projects and  
6 recommend deauthorization;

7 (8) identify capital projects that have been  
8 completed and fund balances that are available for reversion;

9 (9) provide training and assistance to  
10 eligible entities on planning, budgeting and administration of  
11 capital projects, including proper accounting and monitoring  
12 and completion of capital projects within statutory deadlines  
13 and the reversion of unexpended funds as required by law;

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

21 (11) provide capital outlay project  
22 information required by the legislative council service to  
23 create capital outlay legislation; and

24 (12) staff the council.

25 B. The division and the legislative finance

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1 committee, cooperatively or individually, may conduct  
2 compliance and performance audits of capital projects and may  
3 coordinate those audits with the financial audits conducted by  
4 the state auditor.

5 C. All state agencies, institutions and  
6 instrumentalities shall assist the division as required for the  
7 division to carry out its duties.

8 D. The division shall report as required by  
9 appropriate interim legislative committees.

10 SECTION 4. [NEW MATERIAL] CAPITAL OUTLAY PLANNING  
11 COUNCIL--CREATED.--

12 A. The "capital outlay planning council" is  
13 created, consisting of:

14 (1) the secretary of finance and  
15 administration, who shall serve as chair;

16 (2) director of the legislative council  
17 service or the director's designee;

18 (3) the director of the legislative finance  
19 committee or the director's designee;

20 (4) the director of the division; and

21 (5) representatives of the following agencies  
22 or other entities who have direct responsibility for planning  
23 or overseeing capital projects for their agencies or entities:

24 (a) the capitol buildings planning  
25 commission;

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- 1 (b) the facilities management division  
2 of the general services department;
- 3 (c) the cultural affairs department;
- 4 (d) the local government division of the  
5 department of finance and administration;
- 6 (e) the department of environment;
- 7 (f) the aging and long-term services  
8 department;
- 9 (g) the higher education department;
- 10 (h) the department of transportation;
- 11 (i) the Indian affairs department;
- 12 (j) the public education department;
- 13 (k) the New Mexico finance authority;
- 14 and
- 15 (l) the New Mexico association of  
16 regional councils of governments.

17 B. The council may invite representatives of  
18 federal agencies that provide loans and grants to New Mexico  
19 communities for infrastructure and other capital projects to  
20 participate in meetings of the council and may invite other  
21 participants as it deems necessary.

22 C. The division shall staff the council, and the  
23 department of finance and administration shall administer  
24 funding of the council.

25 D. The division shall not pay per diem and mileage

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1 or any other compensation, perquisite or allowance to members  
2 of the council for service as a member of the council.

3 E. The council shall oversee the development of the  
4 state capital improvements plan by the division.

5 SECTION 5. [NEW MATERIAL] STATE CAPITAL IMPROVEMENTS  
6 PLAN.--

7 A. The division shall, with the assistance of the  
8 council, prepare and annually update a five-year "state capital  
9 improvements plan" that details the capital projects  
10 recommended to be undertaken by eligible entities with state  
11 aid or under state regulation. The plan shall:

12 (1) include an economic forecast and a  
13 discussion of economic activities that bear on the need for  
14 state or local infrastructure;

15 (2) include a description of outstanding  
16 capital projects being funded with state money, their estimated  
17 completion date, their initial cost, their estimated completion  
18 cost and their estimated operational costs for the first five  
19 years;

20 (3) classify capital projects with respect to  
21 urgency and need for realization;

22 (4) recommend a time sequence for construction  
23 or purchase of specific capital projects;

24 (5) contain an estimated cost of each capital  
25 project, as well as the probable operating and maintenance

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1 costs of each project;

2 (6) identify any revenue that will be  
3 generated by a capital project;

4 (7) identify existing or additional sources of  
5 funds needed for construction and operation of each capital  
6 project;

7 (8) identify the eligible entity that owns a  
8 capital project; and

9 (9) provide other information for any capital  
10 project or for the state capital improvements plan as  
11 determined by the division.

12 B. All capital project recommendations of the  
13 executive shall be based on the state capital improvements  
14 plan.

15 C. Beginning in 2016, the division shall report to  
16 the legislative finance committee and the revenue stabilization  
17 and tax policy committee annually on the status of the state  
18 capital improvements plan and modifications made to that plan.

19 SECTION 6. [NEW MATERIAL] CAPITAL PROJECT REQUESTS--  
20 GUIDELINES--INFRASTRUCTURE CAPITAL IMPROVEMENTS PLANS--  
21 SUBMISSION TO DIVISION.--

22 A. By January 15 of each year, the division shall  
23 publish capital project guidelines to be followed by eligible  
24 entities that plan to seek funding for any capital project in  
25 the next year's legislative session. The guidelines shall also

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1 identify those provisions that a tribe is required to follow in  
2 seeking funding for a capital project.

3 B. The guidelines shall include provisions to guide  
4 state agencies that review capital project requests or  
5 infrastructure capital improvements plans from eligible  
6 entities. The state capital improvements plan and each local  
7 government's infrastructure capital improvements plan shall be  
8 updated each year. A tribe is not required to provide  
9 infrastructure capital improvements plans to the division.

10 C. The guidelines shall include:

11 (1) a requirement that a state agency or a  
12 local government requesting state capital outlay funds is not  
13 eligible for that funding if it does not have a completed  
14 current audit or has not entered into a plan approved by the  
15 state auditor for completion of its audit;

16 (2) a requirement that a local government be  
17 current on its budget and quarterly report submissions to the  
18 local government division of the department of finance and  
19 administration;

20 (3) a requirement for local government  
21 infrastructure capital improvements plans to be submitted to  
22 appropriate state agencies;

23 (4) requirements for analyzing immediate and  
24 future needs of the state, regions of the state and localities;  
25 and

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1 (5) requirements for analyzing requests in  
2 light of:

3 (a) critical needs of the state and  
4 local governments, including health and safety needs;

5 (b) the ability of the local government  
6 to provide matching funds for the capital project;

7 (c) the availability of other sources  
8 for the capital project;

9 (d) the capital project's priority on  
10 either the state capital improvements plan or a local  
11 government's infrastructure capital improvements plan;

12 (e) the ability to phase the capital  
13 project, if necessary, and the availability of funding to  
14 complete at least one full, functional capital project phase;

15 (f) the ability of the eligible entity  
16 to provide for the operation and maintenance of the capital  
17 project;

18 (g) the expected useful life of the  
19 capital project;

20 (h) the available alternatives to the  
21 capital project as requested;

22 (i) consideration of whether a  
23 renovation project will forestall substantial capital outlay  
24 costs in the short and long terms;

25 (j) the most appropriate funding sources

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1 for types of capital projects; and

2 (k) other considerations determined by  
3 the division, after consultation with the council.

4 D. By May 1 of each year, all infrastructure  
5 capital improvements plans shall be submitted as follows:

6 (1) local government or regional plans that  
7 are not otherwise submitted to another state agency are due to  
8 the local government division of the department of finance and  
9 administration;

10 (2) water and wastewater plans are due to the  
11 department of environment;

12 (3) street, road and highway plans are due to  
13 the department of transportation;

14 (4) area agency on aging or local aging  
15 program plans are due to the aging and long-term services  
16 department;

17 (5) public post-secondary educational  
18 institution, special school and tribal college plans are due to  
19 the higher education department;

20 (6) state museum, state monument and historic  
21 site plans are due to the cultural affairs department;

22 (7) state agency plans for state agencies  
23 under the jurisdiction of the facilities management division of  
24 the general services department are due to the facilities  
25 management division;

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1 (8) state and local government plans that are  
2 part of master plans approved by the capitol buildings planning  
3 commission are due to the capitol buildings planning  
4 commission; and

5 (9) capital improvements plans for the New  
6 Mexico state fair, state parks division of the energy, minerals  
7 and natural resources department, state armory board, tribal  
8 infrastructure board, colonias infrastructure board, water  
9 trust board, judicial branch and any other capital improvements  
10 plans or capital project requests that are not specifically  
11 assigned to another state agency are due to the division.

12 E. All state agencies that are responsible for  
13 reviewing capital project requests shall submit their  
14 recommendations to the division by August 1 of the year prior  
15 to the year in which funding is sought. For local government  
16 projects, the recommendations shall include comprehensive  
17 analysis of the local government's capacity and effort to fund  
18 the requested capital project and its ability to operate the  
19 capital project, if applicable.

20 F. The division shall review the recommendations  
21 and hold hearings on the recommendations by September 15 of  
22 each year. The division shall report its findings to the  
23 governor and the legislative finance committee by October 1 of  
24 each year. The division's report to the legislative finance  
25 committee shall include proposed changes to the state capital

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1 improvements plan and a listing of all capital project requests  
2 received, findings of each reviewing agency and findings of the  
3 division.

4 G. The division shall publish the annual state  
5 capital improvements plan, an abstract of which shall be  
6 included in the executive budget recommendations for the  
7 following fiscal year.

8 H. The division shall provide the legislative  
9 council service, the revenue stabilization and tax policy  
10 committee and the legislative finance committee with the annual  
11 state capital improvements plan at the time of publication.

12 SECTION 7. [NEW MATERIAL] REPORTS.--Every state agency  
13 responsible for capital projects shall file electronic  
14 quarterly status reports with the division and the legislative  
15 finance committee on appropriations and expenditures.

16 SECTION 8. Section 9-6-3 NMSA 1978 (being Laws 1977,  
17 Chapter 247, Section 3, as amended) is amended to read:

18 "9-6-3. DEPARTMENT OF FINANCE AND ADMINISTRATION--  
19 CREATION--TRANSFER AND MERGER OF DIVISION FUNCTIONS--MERGER AND  
20 CREATION OF DIVISIONS.--

21 A. The "department of finance and administration"  
22 is created. The department shall consist of those divisions  
23 created by law or executive order, as modified by executive  
24 order pursuant to Subsection C of this section, including but  
25 not limited to:

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- 1 (1) the board of finance division;
- 2 (2) the financial control division;
- 3 (3) the local government division;
- 4 (4) the management and contracts review
- 5 division; ~~and~~
- 6 (5) the state budget division; and
- 7 (6) the capital outlay planning and monitoring
- 8 division.

9 B. The secretary is empowered to organize the  
10 department and the divisions thereof specified in Subsection A  
11 of this section and may transfer or merge functions between  
12 divisions in the interest of efficiency and economy.

13 C. The governor is empowered to merge divisions of  
14 the department or to create additional divisions by executive  
15 order in the interest of efficiency and economy."

16 SECTION 9. Section 9-6-5.1 NMSA 1978 (being Laws 1983,  
17 Chapter 296, Section 7) is amended to read:

18 "9-6-5.1. PLANNING POWERS AND DUTIES OF SECRETARY OF  
19 FINANCE AND ADMINISTRATION.--The secretary of [~~the department~~  
20 ~~of~~] finance and administration, in addition to the other powers  
21 and duties conferred:

22 A. shall review federal grant applications and  
23 provide management assistance;

24 B. shall coordinate, in accordance with directives  
25 from the governor's office of policy and planning, state agency

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1 plans for economic, natural resource, energy resource and human  
2 resource development;

3 C. shall provide aid to planning and development  
4 districts in developing grant proposals and cooperate with  
5 other local entities in developing grant proposals;

6 ~~[D. shall acquire, study and review all plans for~~  
7 ~~capital projects proposed by state agencies and render advice~~  
8 ~~on the plans. The secretary shall maintain long-range~~  
9 ~~estimates and plans for capital projects and develop standards~~  
10 ~~for measuring the need for and utility of proposed projects;~~

11 ~~E.]~~ D. may contract for, receive and utilize any  
12 grants or other financial assistance made available by the  
13 United States government or by any other source, public or  
14 private;

15 ~~[F.]~~ E. may provide planning and funding assistance  
16 to units of local government, council of government  
17 organizations, Indian tribal governments with tribal lands  
18 situated wholly or partially within New Mexico and ~~[to]~~  
19 nonprofit entities having for their purpose local, regional or  
20 community betterment. The secretary, incident to any such  
21 programs, may enter into contracts and agreements with such  
22 units of local government, council of government organizations,  
23 Indian tribal governments, nonprofit entities and the federal  
24 government and may participate in or receive aid from any  
25 federal or private program in relation to such a planning

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1 program or assistance;

2 [G.] F. shall confer with the state budget division  
3 [~~of the department of finance and administration~~] and the  
4 capital outlay planning and monitoring division in developing  
5 comprehensive plans to assure coordination of planning and  
6 budgeting functions;

7 [H.] G. shall coordinate the state clearinghouse  
8 review process;

9 [I.] H. shall develop a status of the state report;

10 [J.] I. shall review and coordinate comment by  
11 state agencies on draft environmental impact statements;

12 [K.] J. shall provide community development block  
13 grant technical assistance to local governments;

14 [L.] K. shall administer, in consultation with and  
15 upon advice and direction from the community development block  
16 grant policy committee, the program for the state community  
17 development block grant program;

18 [M.] L. shall serve as staff to the New Mexico  
19 association of regional councils;

20 [N.] M. shall maintain a state planning library;  
21 and

22 [O.] N. shall provide planning assistance to county  
23 and multi-county districts relative to application by such  
24 districts for financial assistance and for regional plan  
25 development."

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1           SECTION 10. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,  
2 MONEY, APPROPRIATIONS AND PROPERTY.--On the effective date of  
3 the provisions of this act, all functions, money,  
4 appropriations, records, furniture, equipment and other  
5 property of the capital projects bureau of the state budget  
6 division of the department of finance and administration are  
7 transferred to the capital outlay planning and monitoring  
8 division of the department of finance and administration.

9           SECTION 11. APPROPRIATION.--

10           A. One million two hundred thousand dollars  
11 (\$1,200,000) is appropriated from the general fund for  
12 expenditure in fiscal year 2015 in the following amounts to the  
13 following agencies for the following purposes:

14                   (1) one million dollars (\$1,000,000) to the  
15 department of finance and administration to establish the  
16 capital outlay planning and monitoring division, to organize,  
17 staff and fund the capital outlay planning council and to carry  
18 out the purposes of the Capital Outlay Planning and Monitoring  
19 Act; and

20                   (2) two hundred thousand dollars (\$200,000) to  
21 the office of the state auditor to cover the costs of financial  
22 audits or fiscal reviews of local governments that are unable  
23 to comply with state audit requirements due to circumstances  
24 beyond the control of the local government resulting in lack of  
25 funds rendering the local government unable to contract for the

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1 conduct of an independent audit or fiscal review.

2 B. As used in this section, "circumstances beyond  
3 the control of the local government" does not mean poor  
4 management or poor planning on behalf of the governing body,  
5 intractable political disputes within the governing body that  
6 cause a failure to provide funding for audits or fiscal reviews  
7 or failure of the governing body to prioritize the need for an  
8 audit or fiscal review when planning the local government's  
9 budget.

10 C. Any unexpended or unencumbered balance remaining  
11 at the end of fiscal year 2015 shall revert to the general  
12 fund.

13 SECTION 12. REPEAL.--Section 6-4-1 NMSA 1978 (being Laws  
14 1975, Chapter 282, Section 3, as amended) is repealed.

15 SECTION 13. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2014.