

January 11, 2014

NM Funding for Water Projects

In November 2013 the Legislative Finance Committee commissioned an evaluation of the funding program utilized by the Water Trust Board and Administered by the New Mexico Finance Authority. The Report; “Water Trust Board - A Review of Planning, Spending and Outcomes” was evaluated against State laws and regulations, including collaboration between member agencies to implement the state water plan and achieve cost effectiveness.

The report illustrates that in order to address the State’s immense water and wastewater infrastructure needs the State of New Mexico will need to modify the existing funding for which it currently provides public financing to meet these needs.

- Attached please find a copy of the Report.
- Attached please find a summary of funding programs and funding sources available for water infrastructure projects.

Capital Outlay Process

Capital outlay funds, in the context of government, are those used to build, improve or equip physical property that will be used by the public. Roads, computers, museums, playgrounds, schools, irrigation ditches, hospitals, lands, and furniture can all be capital outlay projects. In New Mexico, state capital outlay is authorized by the Legislature and generally is nonrecurring - one-time - money. Because of provisions in the New Mexico Constitution, capital outlay can only be used for government-owned facilities.

Source of Capital Outlay

Much of the state’s capital outlay is funded through three sources: general obligation bonds, severance tax bonds and nonrecurring revenue in the general fund. Amounts vary from year to year depending on the economy. Nonrecurring general fund moneys are particularly unpredictable. The state also uses bonds for state transportation projects, projects funded by the New Mexico Finance Authority, and other projects but those bonds are repaid with other revenue.

General obligation bonds are repaid through property taxes and must be approved through a general election. As a result, that money is only available in even-numbered years. General obligation bonds typically support projects for higher education, senior citizens, public schools, and libraries. State buildings, parks, roads, and equipment have been unpopular with voters in recent years, and elections on bonds to pay for projects in those areas have failed.

Severance tax bonds generally are repaid with revenue from taxes on oil, gas, coal and other natural resources “severed” from the land. The amount available through severance tax bonds is largely dependent on the health of the oil and gas industry.

Nonrecurring revenue in the general fund, the primary repository of state revenue, is typically the money left over after the Legislature has funded state government and public school operations and set money aside for reserves.

Priority Projects

The Department of Finance and Administration and the General Services Department are required by state law to develop a four-year plan for major state capital improvement projects.

State agencies develop lists of priority projects internally and transmit those to a panel put together by the two lead agencies. That panel develops a statewide priority list based on a variety of factors, such as public safety and federal mandates. The list becomes part of the executive budget recommendation presented to the Legislature on the first day of the legislative session. The Local Government Division of the Department of Finance and Administration develops the Infrastructure Capital Improvement Plan of projects sought by local governments. Although participation in the plan is voluntary, almost all county, municipal, tribal and special districts participate in the process. Legislators generally introduce legislation for capital projects requested by advocates, constituents, and the local governments within their districts. Few legislators sponsor the high-ticket projects in the Infrastructure Capital Improvement Plan because of the limited share of funds allotted to individual legislators.

Legislative Process

During the legislative session, legislators introduce House or Senate capital outlay requests. The House Taxation and Revenue Capital Outlay Subcommittee hold hearings on all proposed capital outlay projects. The Senate Finance Committee holds hearings only for large state agency and higher education projects and as requested by the sponsor. When the economy is strong and ample capital funds available, the House, Senate and executive split the available capital outlay funds into thirds. More commonly, the Legislature and the executive fund some statewide and regional projects before splitting the remainder for local projects. When money is tight, generally only state-owned and-operated projects are funded. The selected projects then become part of the capital outlay bill, sometimes referred to as the “pork” or “Christmas tree” bill. That bill is generally developed in the last two weeks of the session.

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

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.*

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 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.

The Capital Outlay Bureau (COB) is responsible for coordinating the funding and administration of capital projects under the statutory authority of the State Budget Division, Department of Finance and Administration. The COB works closely with executive agencies and Governor to prepare the Executive Capital Budget. COB is responsible for administering the capital budgeting process. This includes the processing of the Capital Appropriation Bill; assuring appropriations are budgeted and available for Departments to administer. COB also maintains the State Capital Project Monitoring System which tracks all capital appropriations and updates fiscal information bi-weekly. COB monitors the expiration dates of all capital appropriations and ensures timely reversions of expired appropriation balances. COB also provides training, assistance and oversight to agencies on the planning, project management and administration of capital project appropriations. This includes the Infrastructure Capital Improvement Plan for State Agencies.

- 2014 pre-filed Senate Bill 20 - Proposed Capital Outlay Reform is attached.