

Capital Outlay for Counties

Understanding the Legislative Process

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What is LFC staff's role in capital?

- The LFC staff develops a capital outlay “framework” for state-owned facilities legislation for the LFC and full Legislature to consider.
- The development of the “framework” is a year-long process working with the Department of Finance and Administration staff, higher education institutions, state agencies, and other stakeholders.
- Additionally, LFC staff tracks and reports on the progress of state-owned and local capital projects to legislators.
- LFC staff responds to legislator and constituent requests.

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What actions are currently being taken leading into the 2023 session?

- From September to December, the executive and legislative staffs separately analyze capital outlay requests to design budget recommendations.
- Also during the fall, economists from the executive and Legislature develop a consensus revenue estimate. This forecast guides the budget process by predicting how much revenue will be available.
- The LFC finalizes budget recommendations in December.
- State law requires the Governor to submit a budget by January 5 in even-numbered years and by January 10 in odd-numbered years including expenditures for capital outlay.
 - *NMAC 6.3.10 and 6.3.21*

Insight: New Mexico is required to pass a balanced budget. The State also maintains reserve funds for unexpected shortfalls.

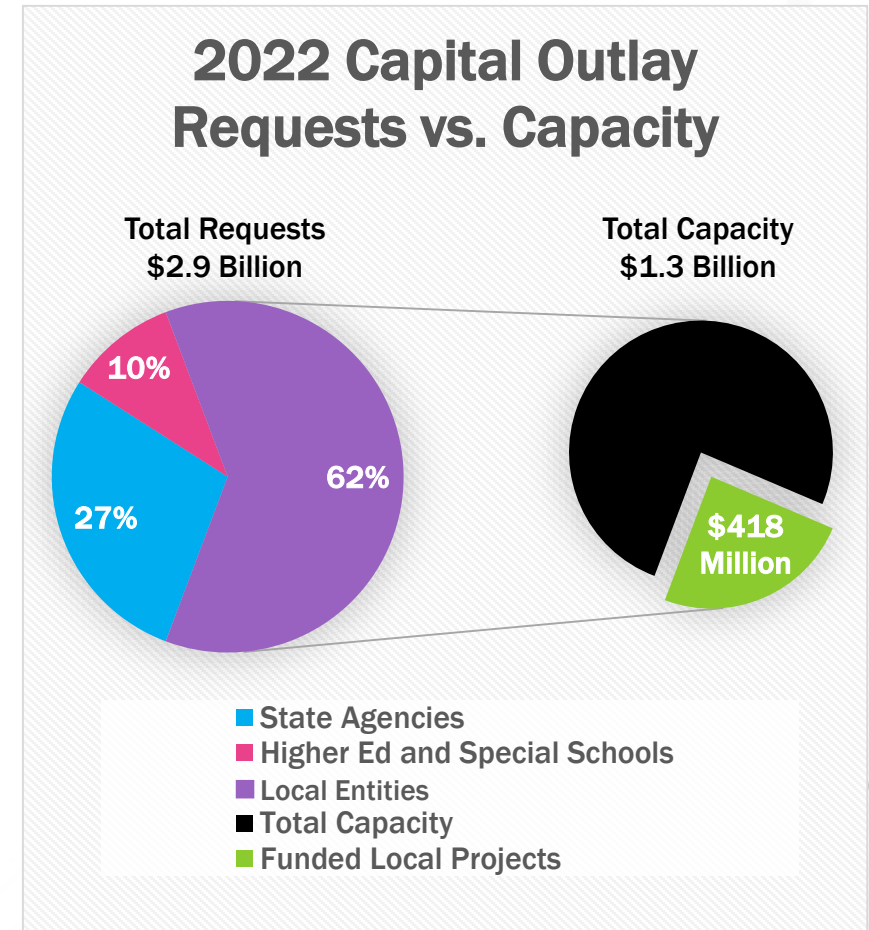
How do requests compare to funding?

The Capital Challenge: Never Enough Funding

- The total requests for capital outlay far exceed available funds.
- In 2022 Session:
 - Priority capital outlay requests totaled \$2.9 billion.
 - Local entities requested \$1.78 billion.
 - Total capacity was estimated at \$1.3 billion (or 44.8% of requests).

Insight: Of the \$663.5 million in severance tax bond within the total 2022 capacity, an estimated \$418 million was appropriated to local projects.

Source: LFC Files



How do we address this challenge?

Recommended Criteria for Legislators to Prioritize Capital Outlay Requests

- **NEED**
 - Demonstrate project will reduce potential or actual health and safety hazards and liability issues or will provide sustainable infrastructure for economic development and growth
 - Project is a high priority on governmental entity's Infrastructure Capital Improvement Plan (ICIP)
 - Project enhances the ability of public entities to provide direct services to students, staff, or the general public
 - Land, property, rights of way, or easements required to begin construction have already been acquired
- **PLANNING & READINESS**
 - A formal planning document has already been completed
 - Project cost estimate is based on a complete planning document and represents a cost-effective solution to the need the project addresses, among potential alternatives that were analyzed
 - Local entity is audit compliant
 - Local entity does not have outstanding projects without activity or expenditures
 - Non-governmental entities are encouraged to get pre-approval from a local government agreeing to include project in ICIP and to serve as fiscal agent for the project.
- **FUNDING & TRACKING**
 - Request fully funds the project or a functional phase, **provides required matching funds for a federal grant**, or is necessary to complete a project that has already received partial funding
 - Funding requested could not be secured through other sources (**Leverage state funds with local, federal, or other sources when possible to fully fund a complete or stand-alone phase**)
 - Local entity has committed some local revenues to the project
 - Ensure the operational and maintenance costs can be adequately addressed.
 - Local government body takes an active role in its capital projects, including regular updates from staff on the status of ongoing projects

Capital outlay bill process during legislative session

- 1 Sponsors of capital bills (severance tax bond and/or general fund, general obligation bond, and reauthorization bill) are determined at LFC hearing in December prior to session.
- 2 Capital bills containing only projects approved by LFC are generally introduced in House or Senate within first two weeks of session and referred to Senate or House finance committees.
- 3 Legislators introduce “capital outlay requests” (HCOR or SCOR) during the session with an introductory deadline much like bills. Deadlines listed on Legislative Council Service website.
- 4 House or Senate finance committees hold hearings on capital bills recommended by LFC but subject to amendment or substitution.
- 5 House and Senate member capital outlay requests are rolled into a substitute bill.
- 6 Final passage of capital bills often occurs during the last two weeks of the session when all available funding sources are known.
- 7 House and Senate bills, as amended or substituted, are then referred to the House or Senate floor for legislative action.

Insights: (1) In the past few administrations, the Executive, House, and Senate have agreed to fund “statewide projects” off the top of available capital capacity. The governor, House, and Senate then evenly divide the remaining funds for local and other state projects.

(2) It should be noted, New Mexico remains the only state to divide state funds for local capital projects without a centralized department or committee for vetting and determining final funding for local capital projects.

(3) The current process has led to several bills intended to “reform” the capital process, but to-date only administrative changes have been made to improve and manage the projects.

Obstacles for Capital Projects

- **Staff identified seven common issues for backlog of funds to develop capital projects**
 - **Lack of project planning**
 - **State requirements (Authorized but Unissued; Audit Compliance)**
 - **Rising construction costs**
 - **Administrative capacity**
 - **Technical capacity**
 - **Piecemealed funding**

Obstacle 1: Lack of Project Planning

- **Local entities report successful use of capital appropriations when:**
 - Multiple stakeholders determine infrastructure capital improvement plan (ICIP) priorities;
 - Project cost estimates are professionally obtained,
 - And pre-session collaboration occurs with legislators.
- **Capital appropriations stall when entities use ICIPs as wish lists, planning occurs after funds are appropriated or a project no requested by an entity receives funding.**
- **Problem of duplication**

Obstacle 2: State requirements (Authorized but Unissued; Audit Compliance)

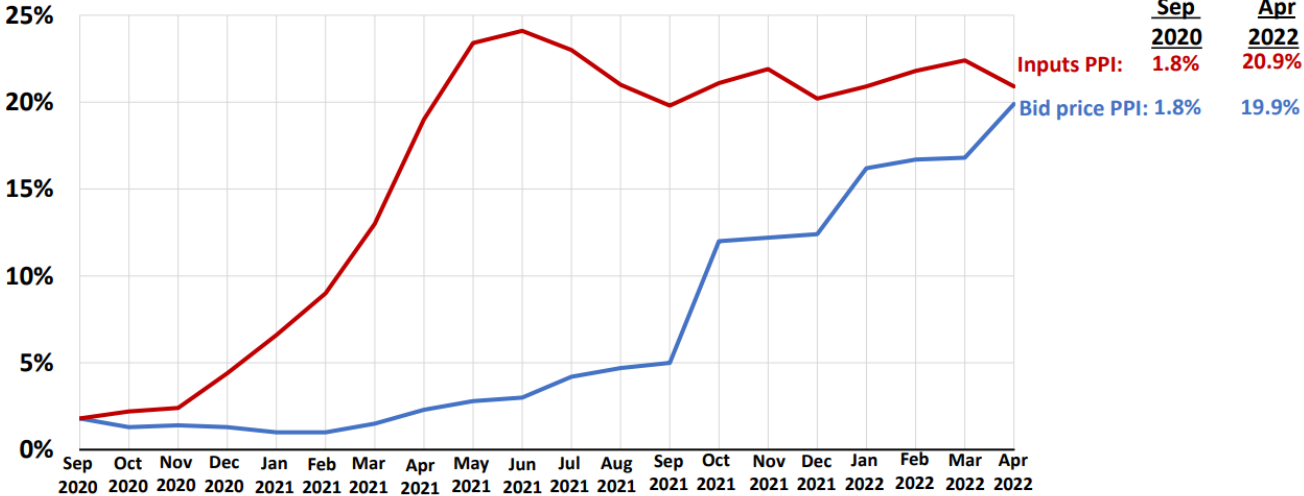
- In June 2021, the Board of Finance did not issue bonds for **116** authorized projects (\$31.2 million) due to:
 - Executive Order 2013-006: Audit Compliance
 - Projects funded from bonds must certify readiness (at least 5% expended in 6 months & 85% in 3 years)
- Fiscal agent agreements (for non-profits and non-audit compliant entities)

Obstacle 3: Increasing Costs

- Construction costs typically increase ~5% annually. Construction inputs were 24% year-over-year in June 2021 and are now 20% April 2022
- Supply-chain disruptions continue to slow projects

Costs vs. bid prices for new nonresidential construction

Year-over-year change in PPIs, Sep 2020–Apr 2022, not seasonally adjusted



1 | Source: Bureau of Labor Statistics, producer price indexes, www.bls.gov/ppi

Obstacle 4: Administrative Capacity

- **Limited staff and turnover at both the local and state level hinder completing administrative tasks related to grant agreements, the procurement process, notices of obligations, and reimbursement requests.**
 - **3,766 projects outstanding statewide**
 - **As an example of a local project, Village of Maxwell's drinking water project was delayed due to a change in administrators.**
- **Entities may struggle to leverage complex funding sources with different requirements**
 - **Water projects alone have a multitude of state-level funding sources now increased by federal funding sources**

Obstacle 5: Technical Capacity

- **Smaller entities struggle to obtain professional services and qualified contractors**
 - **Certain capital projects, such as water systems, require significant design and engineering expertise**
 - **Entities report a shortage of architects, engineers, and project managers**
 - **Smaller entities compete against projects in urban areas**
 - **Misaligned incentives with contracts can lead to sub-optimal outcomes**

Obstacle 6: Piecemealed funding

- **Capital projects do not advance if available funds cannot complete a functional phase.**
- **Piecemeal funding occurs when requests underestimate project costs or appropriations underfund requests.**
 - **Entities with limited planning capacity**
 - **Large districts with many needs**
 - **Rural areas often do not benefit from economies of scale**
 - **Lack of local or federal matching funds**

What Local Leaders & Capital Staff Can Do

Before requests are made:

- Confirm current state appropriations are progressing and fully funded; visit cpms.dfa.state.nm.us to search appropriations
- Confirm audit compliant
- Coordinate priorities with local stakeholders, other public entities, and legislators
- Requests should come from top priorities on the infrastructure capital improvement plan
- Regional projects in rural areas are encouraged
- Execute fiscal agent agreements with non-profits & non-audit compliant entities prior to submitting capital requests
- Fund studies, plan, and design with local funds before requests
- Demonstrate all funds are in place to complete the project within 12 to 18 months
- Use professional estimates and request funds for a phased/functional project. Discourage small projects costing less than \$100,000 unless completes the projects
- Incorporate a contingency and cost escalation into plans
- See “Guidelines for Local Capital Projects” for more information

What Local Leaders & Capital Staff Can Do

After requests are made:

- **Execute grant agreements, submit notices of obligations, and encumber funds as soon as appropriation is budgeted**
- **Provide timely updates through the Capital Project Monitoring System (CPMS) as required by grant agreement**
- **Contact the appropriate executive agency and/or LFC if support is needed**
- **Evaluate the progress of projects regularly**
- **Identify problematic appropriations and seek solutions**

Other Sources of Funding

- Consider other funding including federal programs and the following state sources:
 - New Mexico Finance Authority
 - Public Project Revolving Fund (PPRF)
 - Water Trust Fund
 - Drinking Water State Revolving Fund
 - Colonias Infrastructure Fund (CIF)
 - Local Government Planning Fund
 - NM Indian Affairs Department
 - Tribal Infrastructure Fund (TIF)
 - NM Environment Department
 - Clean Water State Revolving Fund
 - Department of Finance
 - Food Security Grant
 - Outdoor Recreation Grant

Understanding the Legislative Process: An Overview of Capital Appropriations

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What is the importance of tracking projects?

- Tracking all state resources provides accountability to tax-payers and policy-makers.
- Tracking and managing funds leads to effective uses of both state and local resources.
- Tracking demonstrates unspent proceeds, incomplete projects, waste, and misuse.
- Legislators receive quarterly reports on capital projects and use reports to determine additional funding for local entities.
- As of March 2022, roughly 3,300 “outstanding” projects authorized between 2018 and 2021 have an unspent balance of \$2.2 billion with an additional \$2.2 billion (including public school capital outlay projects) in new appropriations to over 1,400 state and local projects from 2022 Session. “Outstanding funds” include unspent but encumbered funds for capital projects in process.
- Grantees responsible for oversight of the project are required to update the Capital Project Monitoring System (CPMS) monthly (<http://cpms.dfa.state.nm.us/>); state agencies are required to update quarterly.

Why track legislation after capital bill has passed?

- Updates are important because they, in part, determine if money is being used and how monies should be allocated in future years.
- Some entities are not complying with the monthly CPMS updates as required in inter-governmental grant agreements between the state and local entities.
- Updates are many times difficult to interpret as written, making the status of the project unclear.
- CPMS is a tool highly used in determining the voiding or swapping of funds, especially at times when the state is facing solvency.

Unclear Update

\$10M Project:
Construction 50 percent complete.

Helpful Updates

MM/YYYY Fire suppression and sprinklers projects have been completed. Lab chairs have been received. Furniture PO for Student Success Center is in process.