

**TITLE 2 PUBLIC FINANCE**  
**CHAPTER 70 CAPITAL EXPENDITURES**  
**PART 4 POLICY ON CAPITAL EXPENDITURES BY STATE EDUCATIONAL INSTITUTIONS**

**2.70.4.1 ISSUING AGENCY:** State Board of Finance.  
[2.70.4.1 NMAC - N, 2/1/2007]

**2.70.4.2 SCOPE:** All institutions of higher education confirmed by Article 12, Section 11 of the New Mexico Constitution.  
[2.70.4.2 NMAC - N, 2/1/2007]

**2.70.4.3 STATUTORY AUTHORITY:** Section 21-1-21, NMSA 1978, as amended, which requires prior approval by the higher education department and state board of finance of any expenditure by any state educational institution confirmed by Article 12, Section 11 of the state constitution for the purchase of real property or construction of buildings or other major structures or major remodeling projects. Section 21-1-21.1, NMSA 1978, as amended, which requires evidence of adequate parking. Executive Order 2006-001, which establishes energy efficiency green building standards for state of New Mexico executive buildings, including the higher education department.  
[2.70.4.3 NMAC - N, 2/1/2007; A, 10/15/2008]

**2.70.4.4 DURATION:** Permanent.  
[2.70.4.4 NMAC - N, 2/1/2007]

**2.70.4.5 EFFECTIVE DATE:** August 30, 1989.  
[2.70.4.5 NMAC - N, 2/1/2007]

**2.70.4.6 OBJECTIVE:**

**A.** Section 21-1-21 NMSA 1978 states: "No expenditure shall be made by any state educational institution confirmed by Article 12, Section 11 of the state constitution for the purchase of real property or the construction of buildings or other major structures or for major remodeling projects without prior approval of the proposed purchase or construction or remodeling by the board of educational finance and the state board of finance".

**B.** Involvement of the state board of finance in the approval of capital outlay projects and capital expenditures at New Mexico colleges and universities is specified by this statute. This involvement is substantially different from the involvement with state building projects, where the state board of finance is the final authority for accepting bids and determining whether the project will be constructed. In the case of educational institutions, the authority for the actual construction of the project resides with the board of regents of the institution. However, New Mexico statute requires the higher education department and the state board of finance to provide prior approval to the board of regents before they are allowed to proceed with the project.

**C.** Since the statute requires the higher education department and the state board of finance to provide "prior" approval of the project, these two bodies should review all major capital projects to determine that the proposed project is in keeping with the overall statewide plan for higher education. The source of funding for the project should also be carefully reviewed to determine that sufficient funds are available for the project and the use of the funds will not have an adverse effect on other portions of the institution's budget. The sufficiency of planning for the project, and the completeness of the review of the project by the board of regents should also be determined.  
[2.70.4.6 NMAC - Rn, Directive 89-4 & A, 2/1/2007]

**2.70.4.7 DEFINITIONS:** For these purposes, "major" is defined as:

**A.** "Appraisal Report" for the purpose of real property purchases means a report of an opinion of value conducted by a general certified appraiser and that meets all requirements under the Uniform Standards of Professional Appraisal Practice (USPAP).

**B.** "Board" means the State Board of Finance.

**C.** "Current" means:

(1) in the context of a title binder dated within six months of the proposed closing date.

(2) in the context of an appraisal an appraisal report with an effective date within one year of the date of submission of the proposed transaction to the board for approval.

D. "Equipment Costs" for the purpose of construction or remodeling are defined as costs for equipment, machinery, apparatus, appliances, furniture, and fixtures, either moveable or non-moveable.

E. "Major" for the purpose of remodeling projects is defined as any project meeting the cost thresholds established in this subparagraph E so long as equipment costs do not exceed fifty (5) percent of the total project cost.

A. (1) any project funded, in whole or in part, by capital outlay legislation signed into law for which costs ~~over-exceed~~ \$500,000~~1,600,000~~.00, at institutions with FTE enrollments under 1,500;

B. (2) any project funded, in whole or in part, by capital outlay legislation signed into law for which costs ~~over-exceed~~ \$750,000~~2,400,000~~.00, at institutions with FTE enrollments of 1,500 or more;

C. (3) any project funded exclusively by sources other than legislative appropriations for which costs ~~over-exceed~~ \$50,000~~160,000~~.00, at institutions with enrollments of 1,500 FTE or less; or

D. (4) any project funded exclusively by sources other than legislative appropriations for which costs ~~over-exceed~~ \$300,000~~950,000~~.00, at institutions with enrollments exceeding 1,500 FTE.

F. "Public Entity" means a local public body, a state agency, a school district, a state educational institution, or other governmental instrumentality created by statute.

G. "Remodel" means to change, modify, or transform a space in a way that alters its use, design, or function, including the reconfiguration of spaces. Remodel encompasses renovation and repair when the use, design, and/or function of a space is altered.

H. "Renovation" means the change, strengthening, or addition of load-bearing elements; or the refinishing, replacement, bracing, strengthening, upgrading, or extensive repair of existing materials, elements, components, equipment or fixtures. To revive, restore, or repair an existing space.

I. "Repair" means the reconstruction, replacement, or renewal of any part of an existing building for the purpose of its maintenance or to correct damage. Repair may include infrastructure systems replacements (e.g., elevators, roofs, HVAC, signage, stucco, windows, lighting, electrical, plumbing, flooring).

[2.70.4.7 NMAC - Rn, Directive 89-4 & A, 2/1/2007]

#### **2.70.4.8 PROJECTS REQUIRING REVIEW:**

A. All projects that fall under the following categories must be submitted for review by the state board of finance:

- (1) any purchase of real property;
- (2) any construction of a new building;
- (3) any project involving a bond issue which requires state board of finance approval;
- (4) any other major project, including construction of facilities such as parking lots or radio

towers; site improvements or landscaping; and remodeling ~~or non-emergency repair~~ of an existing building, but not demolition unless part of a larger project that requires approval.

B. In-house labor applied to a project must be included as part of the cost of the project. Projects may not be artificially segmented or phased in a manner designed to avoid review by the state board of finance.

[2.70.4.8 NMAC - Rn, Directive 89-4, 2/1/2007; A, 10/15/2008]

#### **2.70.4.9 INFORMATION REQUIRED FOR SUBMISSION FOR PURCHASE OF REAL PROPERTY:**

A. To ensure that the state board of finance will have sufficient information to review capital ~~outlay~~ expenditures at New Mexico's educational institutions, the following information ~~will be required to~~ must be submitted to the board after the higher education department has approved the request:

- (1) legal description of the property;
- (2) a copy of a current appraisal report completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property and report of review from the property tax division of the taxation and revenue department if the appraisal was not done by the property tax division; the educational institution seeking property tax division review must submit necessary information to the property tax division within the time frame specified by the property tax division; when the seller is another governmental entity, neither an appraisal nor property tax division review is required; a copy of the appraisal and concurrence therewith, if performed by an independent appraiser, by the property tax division of the taxation and revenue department;

information to the property tax division within the time frame specified by the property tax division; when the seller is another governmental entity, neither an appraisal nor property tax division review is required; a copy of the appraisal and concurrence therewith, if performed by an independent appraiser, by the property tax division of the taxation and revenue department;

(3) a site improvement survey to verify the legal description and to uncover the existence of recorded and unrecorded easements and encroachments;

- (4) a description of the use to which the property will be placed;

(5) the source of funds for the purchase to include citation of the relevant section of the law when source of funds is legislative appropriation and in the case of bond funding, representation that bond proceeds are available;

(6) current title binder in the form required by 13.14.5 NMAC evidencing clear title, including all required statements. For any special exceptions listed in Schedule B, the public body shall provide an explanation of each exception and measures it is taking to mitigate any risks associated with the exception; ~~current title binder evidencing clear title with no non-standard exceptions, and agreement by the title company that it will delete general exceptions 1 through 6 and the first two-thirds of 7;~~

(7) the form of general warranty deed by which the educational institution will take title in fee simple absolute containing a legal description of the property and warranty covenants; when the seller is another governmental entity, transfer of title shall be by quitclaim deed; ~~merchantable fee simple title by warranty deed, except if the seller is a public entity;~~

(8) phase I of an environmental assessment to verify prior use of the land with regard to possible environmental hazards;

(9) a copy of the purchase agreement, ~~which should~~ containing a provision making the ~~acquisition purchase~~ subject to the approval of higher education department and the state board of finance; and

(10) evidence of approval of ~~acquisition the purchase by~~ the applicable board of regents state educational institution's governing board and the higher education department.

B. Waivers of certain provisions may be granted at the discretion of the board of finance, on a case by case basis, ~~until patterns develop that can be worked into the policy. Additionally,~~

C. ~~R~~Requirements affecting bond approvals are set forth in 2.61.5 NMAC. [2.70.4.9 NMAC - Rn, Directive 89-4 & A, 2/1/2007; A, 10/15/2008]

#### **2.70.4.10 INFORMATION REQUIRED FOR SUBMISSION FOR CONSTRUCTION OF BUILDINGS OR OTHER FACILITIES; MAJOR REMODELING ~~OR REPAIRS~~:**

A. To ensure that the state board of finance will have sufficient information to review capital ~~outlay~~ expenditures at New Mexico's educational institutions, the following ~~information will be required to~~ must be submitted to the board after the higher education department has approved the request:

(1) a description of the facility to be constructed or ~~repaired~~ remodeled, including the types of space to be included, the function of the facility, and the relationship of the project to the institution's five-year master plan;

(2) the total square footage of the facility, both net assignable square feet and gross square feet;

(3) the cost per square foot for the construction or ~~repair~~ remodel of the facility and the cost per square foot for the total project;

(4) a budget for the project, including equipment costs, architects and engineering fees and contingencies;

(5) source of funds to include citation of the relevant section of the law when source of funds is legislative appropriation and in the case of bond funding, representation that bond proceeds are available;

(6) certificate of adequate parking as required in Section 21-1-21.1, NMSA 1978, as amended;

(7) evidence of approval of expenditure by applicable board of regents and higher education department;

(8) evidence of approval by higher education department and the Energy, Minerals, and Natural Resources Department of the following criteria as it may be amended ~~by higher education department~~ from time to time:

(a) certification and demonstration of compliance with all commercial energy conservation requirements as set forth in 14.7.9 NMAC. Certification and demonstration means showing of qualifications or attributes that comply with or meet the specified requirements or standards set forth in 14.7.9 NMAC by either officially attesting to or authoritatively confirming through review by the Energy, Minerals, and Natural Resources Department or the Higher Education Department; and

~~(b)~~ (b) if the facility is less than or equal to 5,000 square feet, evidence of energy efficient measures;

~~(b)~~ (b) if the facility is greater than 5,000 square feet and less than or equal to 15,000 square feet, evidence of fifty percent reduction in energy use compared to existing facilities of similar type as defined by the United States department of energy; or

(ed) if the facility is greater than 15,000 square feet, evidence of fifty percent reduction in energy use compared to existing facilities of similar type as defined by the United States department of energy and the achievement of a LEED silver rating or better.

**B.** Waivers of certain provisions may be granted at the discretion of the board of finance, on a case by case basis, ~~until patterns develop that can be worked into the policy. Additionally,~~

**C.** ~~Requirements~~ Requirements affecting bond approvals are set forth in 2.61.5 NMAC.  
[2.70.4.10 NMAC - Rn, Directive 89-4 & A, 2/1/2007; A, 10/15/2008]

**2.70.4.11 REVISED PROJECTS:** To ensure that the project actually constructed will be substantially the same as that approved by the higher education department and the state board of finance, any change in the project resulting in a change in the budget of more than ten (10) percent will require separate review and approval by the state board of finance. The same information will be required for such changes as is required for the original submission of the project. Any additional information which can help in evaluating a proposed project can be requested by the state board of finance prior to approval.

[2.70.4.11 NMAC - Rn, Directive 89-4 & A, 2/1/2007]

**HISTORY OF NMAC 2.70.4 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Directive 89-4, Policy on Capital Expenditures by State Educational Institutions, 8/30/1989.

**History of Repealed Material: [RESERVED]**