

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 3 POST-SECONDARY EDUCATION INSTITUTION FINANCES
PART 10 CAPITAL PROJECTS APPROVAL BY THE NEW MEXICO HIGHER EDUCATION DEPARTMENT

5.3.10.1 ISSUING AGENCY: State of New Mexico higher education department, 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505-2100, (505)476-8400.
[5.3.10.1 NMAC - Rp, 5.3.10.1 NMAC, 10/31/2017]

5.3.10.2 SCOPE: All public post-secondary educational institutions operating within and receiving financial support from the state of New Mexico.
[5.3.10.2 NMAC - Rp, 5.3.10.2 NMAC, 10/31/2017]

5.3.10.3 STATUTORY AUTHORITY: Section 21-1-21 NMSA 1978, Sections 21-2A-1 et seq. NMSA 1978, Section 9-25-13 NMSA 1978, and Section 9-25-8 NMSA 1978.
[5.3.10.3 NMAC - Rp, 5.3.10.3 NMAC, 10/31/2017]

5.3.10.4 DURATION: Permanent.
[5.3.10.4 NMAC - Rp, 5.3.10.4 NMAC, 10/31/2017]

5.3.10.5 EFFECTIVE DATE: October 31, 2017 [unless a later date is cited at the end of a section].
[5.3.10.5 NMAC - Rp, 5.3.10.5 NMAC, 10/31/2017]

5.3.10.6 OBJECTIVE:

A. The objective of 5.3.10 NMAC is to assume responsibility for approving all building construction, major remodeling projects, and purchases of real property at public post-secondary educational institutions.

B. The purpose of 5.3.10 NMAC is to provide approval of proposed capital outlay projects for which funding is available and to be handled by the department.

[5.3.10.6 NMAC - Rp, 5.3.10.6 NMAC, 10/31/2017]

5.3.10.7 DEFINITIONS:

A. “**Capital outlay committee**” means the standing committee of the New Mexico department of higher education that reviews all capital projects.

B. “**Department**” means the New Mexico department of higher education.

C. “**FTE enrollments**” means the total number of student credit hours divided by 30 at the undergraduate level and divided by 24 at the graduate level, on an annual basis.

D. “**Institutional plan**” means the plan that each university, branch campus, college and special school must have on file at the department. It is a current five-year institutional plan containing the information on capital resources which is required by the institutional planning guidelines. The required information for branches of four-year institutions may be included in the main campus institutional plan, but must be provided in full for each branch campus.

E. “**Legal description**” means the legal description of the subject property as described by the meets and bounds survey as completed and verified by a certified New Mexico land surveyor.

F. “**Real property**” means land and all interests in it such as buildings and fixtures.

[5.3.10.7 NMAC - Rp, 5.3.10.7 NMAC, 10/31/2017]

5.3.10.8 PRINCIPLES AND PROCEDURES: Following are the principles and procedures for approval of proposed capital outlay projects:

A. All projects submitted for department approval must have the prior approval of the institution's governing board.

B. Proposed projects should be consistent with the institutions long-range capital planning as presented in the institutional plan.

C. All projects that fall under the following categories must be submitted to the department for approval:

- (1) any purchase of real property;

(2) any project which results in the addition of square footage, whether from construction or long-term lease of a new facility or a building addition, or purchase of portable buildings;
(3) any proposal to issue bonds;
(4) the approval authority for any alterations or site improvements is as follows, based on total project cost:

(a) For institutions with FTE enrollments of 1,500 or less:
(i) over fifty thousand (\$50,000) - staff approval;
(ii) over three hundred thousand (\$300,000) - capital outlay committee approval;

(b) For institutions with FTE enrollments over 1,500:
(i) over three hundred thousand (\$300,000) - staff approval;
(ii) over five hundred thousand (\$500,000) - capital outlay committee approval;

(iii) Exception: The New Mexico institute of mining and technology will be included with the over 1,500 FTE institutions when a particular project is entirely funded by restricted funds.

(c) In determining the total project cost, in-house labor costs and burden, along with all materials, subcontract costs, and reasonable charge for owned equipment, must be included.

(d) Projects may not be artificially segmented or phased in a manner designed to avoid review by the Department.

(5) Any demolition of an existing building must be submitted for approval by the department staff.

[5.3.10.8 NMAC - Rp, 5.3.10.8 NMAC, 10/31/2017]

5.3.10.9 INFORMATION TO BE SUBMITTED: For construction, renovation, or site improvement projects, institutions must complete the department capital request forms and ensure that information is provided on:

A. need for the proposed facility or improvement and a discussion of how the project relates to the overall institutional plan;

B. if the project was included in the department recommendations for legislative funding, and if applicable, information outlining any departures from descriptions used in obtaining the initial recommendation;

C. a statement that the institutions board of regents or governing board has approved the project;

D. a summary of the types and sizes of facilities to be included in the project;

E. a copy of the project program;

F. completed preliminary floor plan drawings of the project, including elevations, with each space identified as to function;

G. a plot plan indicating the site of the project;

H. the anticipated use of any facilities to be vacated when the project is completed;

I. the projects estimated budget and source of funding.

[5.3.10.9 NMAC - Rp, 5.3.10.9 NMAC, 10/31/2017]

5.3.10.10 FOR PURCHASES OF REAL PROPERTY: For purchase of real property, institutions must submit to the department:

A. a legal description of the property;

B. a copy of the appraisal and a report from the property tax division of the taxation and revenue department containing their appraised value;

C. a site improvement survey to verify the legal description and to uncover the existence of recorded and unrecorded easements and encroachments;

D. a title insurance policy;

E. a description of the use to which the property will be put;

F. a phase one environmental report stating that an environmental review or assessment has been done and that the property is free of environmental hazards and contamination; a written statement that a phase two environmental survey is recommended or is not required;

G. the sources of funds for the purchase;

H. to obtain the approval of the state board of finance, institutions will be required to submit additional documents, as listed in the boards rules and regulations;

I. a copy of warranty deed

[5.3.10.10 NMAC - Rp, 5.3.10.10 NMAC, 10/31/2017]

- 5.3.10.11 APPROVAL PROCESS:** The department's approval process will proceed as follows:
- A.** The department's staff will review the proposed project and will present the project to the capital outlay committee in advance of the meeting at which the project is to be acted upon.
 - B.** Representatives of the institution will appear to present the proposed project to the capital outlay committee.
 - C.** The capital outlay committee will approve or disapprove the project and will present this recommendation to the department. The capital outlay committee may forward a project to the department with no recommendation.
 - D.** The department will act to approve or disapprove the project.
- [5.3.10.11 NMAC - Rp, 5.3.10.11 NMAC, 10/31/2017]

- 5.3.10.12 REVISED PROJECTS:**
- A.** When the development of a project has reached the stage just short of advertising for bids, if substantial changes have occurred in the size of the project, types of spaces, or estimated costs, the institution should resubmit the appropriate forms and plans to the department's staff. The staff will then determine whether the project should proceed or be reconsidered by both the capital outlay committee and the department. Substantial changes are defined as:
 - (1) a change in the size of the project of 10 percent or over 1,000 net assignable square feet, whichever is larger;
 - (2) a 10 percent change in the type or purpose of planned space; or
 - (3) a change in the total project cost of 10 percent or one hundred thousand (\$100,000), whichever is larger.
 - B.** After bids have been received, if it is necessary to make substantial changes as defined in, Paragraph (1), (2), and (3) of Subsection A of 5.3.10.12 NMAC in either the plans or the budget, other than those changes made by alternates, the appropriate forms and plans should be resubmitted reflecting the proposed changes. The staff will then determine whether the project should proceed or be reconsidered by the capital outlay committee or the department.
- [5.3.10.12 NMAC - Rp, 5.3.10.12 NMAC, 10/31/2017]

- 5.3.10.13 NOTICE OF DISPOSITION OF REAL PROPERTY:** Notice of the sale or trade of real property must be submitted to department staff when the property exceeds a current appraisal value of one hundred thousand (\$100,000). The following information should be submitted:
- A.** a description of the land parcel being sold or traded, including a location map and a statement of the appraised value;
 - B.** the reason for the disposition;
 - C.** the amount of anticipated revenue from the sale and the expected use of this revenue;
 - D.** to obtain the approval of the state board of finance, institutions will be required to submit additional documents, as listed in the boards rules and regulations.
- [5.3.10.13 NMAC - Rp, 5.3.10.13 NMAC, 10/31/2017]

- 5.3.10.14 EMERGENCY SITUATIONS:** The capital outlay committee or the department may modify or suspend any of these procedures to expedite projects which are necessary to address emergency situations.
- A.** Deadline dates: 30 days prior to the capital outlay committee meeting at which approval is requested.
 - B.** Reporting Forms: Form 1 through 6 - Department of higher education capital project request forms.
- [5.3.10.14 NMAC - Rp, 5.3.10.14 NMAC, 10/31/2017]

HISTORY OF 5.3.10 NMAC:

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

- BEF Rule 440, Capital Projects - Approved by BEF, 2/27/1985.
- CHE Rule 440, Capital Projects - Approved by CHE, 3/8/1990.
- CHE Rule 440, Capital Projects - Approved by CHE, 10/2/1991.

History of Repealed Material: 5.3.10 NMAC, Capital Projects - Approval by Commission on Higher Education, filed 10/31/2001 - Repealed, effective 10/31/2017.

Other History: 5.3.10 NMAC, “Capital Projects - Approval by Commission on Higher Education”, filed 10/31/2001 was replaced by 5.3.10 NMAC, “Capital Projects - Approval by the Higher Education Department”, effective 10/31/2017.