TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 3 POST-SECONDARY EDUCATION INSTITUTION FINANCES
PART 9 CAPITAL BUDGETS - PLANNING AND FUNDING RECOMMENDATIONS

5.3.9.1 ISSUING AGENCY: State of New Mexico Higher Education Department.
[~~12/31/1998; 5.3.9.1 NMAC - Rn & A, 5 NMAC 3.9.1, 07/31/2005~~]
[5.3.9.1 NMAC – Rp., 5.3.9.1 NMAC, X/XX/2026]

5.3.9.2 SCOPE: All public post-secondary educational institutions operating within and receiving financial support from the state of New Mexico and special schools.
[~~12/31/1998; 5.3.9.2 NMAC - Rn, 5 NMAC 3.9.2, 07/31/2005~~]
[5.3.9.2 NMAC – Rp., 5.3.9.2 NMAC, X/XX/2026]

5.3.9.3 STATUTORY AUTHORITY: [~~Authority for 5.3.9 NMAC is found in NMSA 1978 Sections 12-1-21.~~] Section 9-25-1 et seq. NMSA 1978, Section 21-1-21 NMSA 1978 and Section 21-1-26 et seq. NMSA 1978.
[~~12/31/1998; 5.3.9.3 NMAC - Rn, 5 NMAC 3.9.3, 07/31/2005~~]
[5.3.9.3 NMAC – Rp., 5.3.9.3 NMAC, X/XX/2026]

5.3.9.4 DURATION: Permanent.
[~~12/31/1998; 5.3.9.4 NMAC - Rn, 5 NMAC 3.9.4, 07/31/2005~~]
[5.3.9.4 NMAC – Rp., 5.3.9.4 NMAC, X/XX/2026]

5.3.9.5 EFFECTIVE DATE: [~~December 31, 1998,~~] June 23, 2026, unless a later date is cited at the end of a section.
[~~12/31/1998; 5.3.9.5 NMAC - Rn & A, 5 NMAC 3.9.5, 07/31/2005~~]
[5.3.9.5 NMAC – Rp., 5.3.9.5 NMAC, X/XX/2026]

5.3.9.6 OBJECTIVE:

A. The objective of 5.3.9 NMAC is to establish a process by which the [~~higher education~~] department will review capital outlay funding [~~recommendation~~] request packages developed by public post-secondary institutions [~~and present those to the higher education department and submit those approved to the legislature annually.~~] and special schools, approved by institutional governing boards, and presented to the department for recommendation to the legislature annually.

B. The purpose of 5.3.9 NMAC is to provide public [~~higher education~~] post-secondary institutions and special schools with an equitable process by which the department can review packages from institutions that contain capital projects, listed in priority order, that are considered to represent the greatest needs of the state and of the institutions. The [~~higher education~~] department, will review requests for capital outlay funding submitted by [~~postsecondary~~] public post-secondary institutions and special [~~constitutional~~] schools, recommend the projects in priority order, and present funding recommendations for approval by the department.
[~~12/31/1998; 5.3.9.6 NMAC - Rn & A, 5 NMAC 3.9.6, 07/31/2005~~]
[5.3.9.6 NMAC – Rp., 5.3.9.6 NMAC, X/XX/2026]

5.3.9.7 DEFINITIONS: [~~RESERVED~~]

A. "Athletic Facility Project" means capital projects exceeding fifty million dollars ($50,000,000) that construct or renovate competition or training facilities designed primarily or exclusively for intercollegiate student-athletes at institutions participating and in good standing with the national collegiate athletic association (NCAA) division I or division II, and do not include recreation or wellness facilities intended for the general student population. Athletic facility projects are only eligible for consideration under the higher education major projects fund submission process outlined in the department's instruction manual for annual capital outlay funding requests.

B. "Construction" means the project execution phase in which a contractor implements the approved design and technical specifications, coordinating labor, materials, and equipment to physically assemble a capital asset."

C. "Department" means the New Mexico higher education department.

D. "Design" means the comprehensive, multi-phase technical development process comprising programming, schematic design, design development, and the finalization of construction documents required to

DRAFT

transform an identified institutional need into a fully realized, cost-validated capital asset that conforms to the institution's long-range facility plan.

E. "Division I" means the highest level of intercollegiate athletics as defined by the NCAA and characterized by the pursuit of national-level competition, significant financial investment, and the ability to offer athletic scholarships. A four-year institution applying for division I athletic facilities funding from the higher education major projects fund shall provide data that shows that the most recent six-year graduation rate for first-time full-time freshmen is sixty-five percent or higher or that the graduation rate for students in the most recent year is higher than the average rate of the previous three years.

F. "Division II" means an intermediate-level of intercollegiate athletics defined by the NCAA that operates under the philosophy of "life in the balance" and focuses on integrating athletics into the broader educational experience rather than prioritizing elite, entertainment-focused competition.

G. "Four-year institution" means a university enumerated in Article 12, Section 11 of the constitution of New Mexico.

H. "Higher education major projects fund" means the nonreverting fund created in the state treasury that is administered by the department for major capital outlay projects at public post-secondary institutions. The fund consists of appropriations, income from investment of the fund, gifts, grants, donations and other money credited to the fund. Money in the fund is subject to appropriation by the legislature.

I. "Major projects" means research and instruction and general purpose facilities of four-year institutions costing fifty million dollars ($50,000,000) or more.

J. "Public post-secondary institution" means any state-supported four-year university, two-year college, or tribal college lawfully created and maintained pursuant to state, federal, or tribal authority for the purpose of higher education.

K. "Single purpose venue" means a facility that is designed, built, and operated primarily or exclusively for one specific non-instructional, non-research activity, program, or function, and is not intended for broad, multi-use purposes.

L. "Special schools" means the New Mexico school for the deaf (NMSD) and the New Mexico school for the blind and visually impaired (NMSBVI).

M. "Student housing" means any residential facility owned by a public post-secondary institution where the primary purpose is to provide lodging for enrolled students, including facilities located on or off the main campus. Student housing projects are only eligible for consideration under the higher education major projects fund submission process outlined in the department's instruction manual for annual capital outlay funding requests.

N. "Student life projects" means major capital outlay for public post-secondary institution's nonacademic purposes that enhance students' college experience, including recreation centers, dining halls, and other campus amenity facilities. Student life projects are only eligible for consideration under the higher education major projects fund submission process outlined in the department's instruction manual for annual capital outlay funding requests.

O. "Tribal college" means a tribally, federally or congressionally chartered post-secondary educational institution located wholly within New Mexico.

P. "Two-year institution" means a community college, including branch community colleges, northern New Mexico college and the New Mexico military institute for its junior college program.

[5.3.9.7 NMAC – N, X/XX/2026]

5.3.9.8 REVIEW CRITERIA:

A. Reviewing and recommending: In reviewing and recommending capital project requests, the [~~higher education~~] department will be guided by the general criteria listed below. Specific determinants for evaluating the projects may vary from year to year as the immediate capital needs of the institutions evolve and as requirements for code compliance are revised. These influences will be explained each year in the capital project recommendations document prepared for the New Mexico legislature. In general, the [~~higher education~~] department will give preference to the following types of projects:

(1) projects which are strongly related to instructional programs, and which support an [~~institutions~~] institution's mission and particular role;

(2) projects to provide high quality educational settings which represent up-to-date technologies;

(3) projects which are necessary to accommodate enrollment growth;

(4) projects to address major health and safety problems and elimination of physical barriers to handicapped persons;

(5) projects resulting from unforeseen conditions that if uncorrected would result in major property deterioration;

(6) projects to renovate facilities or to make wise use of other existing resources whenever feasible and economical;

(7) projects to improve utilities systems or building energy efficiency that will result in rapid capitalization of initial costs and long-term reduction of energy costs;

(8) projects for which there is no other available or more appropriate funding source, such as building renewal and replacement funds, local bonds, revenue bonds, auxiliary revenues, or research revenues; and

(9) projects eligible for construction phase funding from the higher education major projects fund for which at least fifty percent of the design phase is completed, and design documents are readily available.

B. Projects eligible for capital outlay recommendation: Capital outlay projects which are primarily used to support the following activities are eligible for consideration by the [~~higher education~~] department for state funding:

(1) Instruction: Instructional space includes classrooms, laboratories, other teaching facilities, and office space for faculty deans, and instructional department heads and related clerical staff.

(2) Library: All activities necessary to operate libraries are eligible.

(3) Administration services: All activities related to student services or institutional administration are included in this category (e.g., admissions, administrative vice presidents, comptroller, computer center, dean of students, maintenance work shops, placement services, university architect, vocational director).

(4) Research: Only four-year institutions may submit requests for state funds for capital outlay projects to house research activities which will enhance fulfillment of the institution's mission. All sponsored research and organized research units, including administration and management of research activities, may qualify for support.

(5) Public service: Institutions may submit requests for state funds for capital outlay projects to house public service activities. Eligibility under this category is limited to sponsored public service activities and organized public service units, such as public broadcasting services, small business development centers, and cooperative extension services. See Subsection C of 5.3.9.8 NMAC [~~below~~] for activities not eligible for state funding.

(6) Physical plant: Circulation and support space, such as halls, restrooms, and mechanical equipment rooms, for buildings housing eligible activities will be included in all capital outlay projects. In addition, the following types of projects are eligible for consideration: stand-alone utility structures such as heating and cooling plants, electric substations, and utility tunnels; physical plant shops offices and storage areas; and site improvements for infrastructure systems such as roads, parking lots, drainage or storm sewers, water or wastewater, telecommunications cables, or heating/cooling loops.

(7) Multi-use facilities: Capital projects with buildings that house more than one activity, one or more of which are eligible for state funding, may be submitted. However, only space devoted to eligible activities may be considered for state funding. A plan for funding the ineligible space from non-state sources must be included with the proposed project. For individual projects with common space used for both eligible and ineligible activities, state funding will be prorated based upon the percentage of time and amount of space allocated to eligible activities; the balance must be supported from other sources. (See the proration formula in Subsection D of 5.3.9.8 NMAC.)

(8) Land acquisitions: Land to be used for eligible activities will be considered for state funding.

(9) Student housing: As defined in Subsection M of 5.3.9.7 NMAC.

(10) Student life projects: As defined in Subsection N of 5.3.9.7 NMAC.

(11) Athletic Facility Projects: As defined in Subsection A of 5.3.9.7 NMAC.

C. Projects ineligible for capital outlay recommendation: Capital outlay projects which are primarily used for the following activities are not eligible for [~~higher education~~] department recommendation:

(1) Non-instructional athletics, such as intercollegiate sports [~~Examples of ineligible facilities are Pan American center at NMSU and the UNM arena.~~], at non-NCAA division I and division II member institutions.

(2) [~~Recreational or entertainment events,~~] Single purpose venues and auxiliaries such as golf courses, for either students or the general public[~~. Single purpose auditoriums such as Popejoy hall at UNM are ineligible.~~] that do not meet the eligibility requirements for the higher education major projects fund. These operations are not eligible for state funding and are expected to be fully self-supporting and self-liquidating from the revenues generated by their operations.

DRAFT

[~~(3) All auxiliaries, such as bookstores, golf courses, student unions, student housing, etc. These operations are not eligible for state funding and are expected to be fully self-supporting and self-liquidating from the revenues generated by their operations.~~]

D. Proration of funding: When a multi-use building will be used for both eligible and ineligible activities, the funding request must be prorated between state and other sources according to the amount of time and space devoted to eligible vs. ineligible activities. For example: A new fine arts building is being proposed with a total of 70,000 gross square feet (GSF) at a cost of $80/GSF, for a total of $5,600,000. Net assignable square feet (NASF) within the building will be 56,000. Of this amount, 35,000 NASF will be used by activities eligible for state funding; 15,000 NASF will be multi-use 60 percent of the time for eligible activities (instruction) and 40 percent of the time for ineligible activities (community concerts); and 6,000 NASF is ineligible. To determine the portion of the total capital project that is eligible for consideration for state funding, the following formula is used:

(1) (ES + (MU x EU)
NASF x GSF x cost per GSF = State funding for eligible space

(2) (35,000 + (15,000 x .60)
[~~45,000~~] 56,000 x 70,000 x $80 = $4,400,000

(3) ES = Eligible net assignable square feet

(4) MU = Multi-use net assignable square feet

(5) EU = Eligible use (percent of available time used for eligible activities)

(6) NASF = Net assignable square feet

(7) GSF = Gross square feet

E. Exceptions for two-year [~~colleges~~] institutions: Space for certain functions that are ineligible for state funding at four-year institutions [~~such as bookstore operations, food services, community services, and student social, cultural, recreational activities,~~] may be included as a portion of capital projects submitted by two-year [~~colleges~~] institutions. The rationale for this exception is that two-year [~~colleges~~] institutions usually do not have large-scale auxiliary enterprises which can provide an adequate revenue stream for financing auxiliary facilities. These exceptions apply only if a two-year [~~college~~] institution has provided the required local match of twenty-five percent as described in the following Subsection F of 5.3.9.8 NMAC.

F. Required local match:

(1) Higher education major projects fund requests by four-year institutions:

(a) For design phase funding the match must be at least twenty-five percent for research and instruction and general purposes and at least fifty percent for student housing and student life projects.

(b) For construction phase funding the match must be at least ten percent for research and instruction and general purposes and at least twenty percent for student housing and student life projects.

(c) For athletic facilities the project cost is at least fifty million dollars ($50,000,000) and the match must be at least fifty percent and is not waivable.

(2) Higher education major projects fund requests by two-year institutions and tribal colleges for student housing and student life projects will require at least fifty percent match.

(3) [~~For~~] All other capital outlay requests for two-year institutions[~~,~~]: the [~~higher education~~] department requires local matching participation in the amount of twenty-five percent of the total cost for each project or group of projects. However, the [~~higher education~~] department may waive or reduce the twenty-five percent matching requirement if the two-year institution is not authorized to issue local general obligation bonds, is at maximum bonding capacity, or has already contributed from local sources at least twenty-five percent of all construction costs, including the cost of the proposed project.

G. Higher education major projects fund waiver: A required match may be eligible to be waived upon a finding by the department that the public post-secondary institution cannot reasonably afford the match with institutional reserves, institutional bonds in accordance with the Institution Bond Act, property tax levies, federal or tribal support, students fees or other applicable nonstate revenue.

[~~12/31/1998; 5.3.9.8 NMAC - Rn & A, 5 NMAC 3.9.8, 07/31/2005~~]
[5.3.9.8 NMAC – Rp., 5.3.9.8 NMAC, X/XX/2026]

5.3.9.9 INSTITUTIONAL FACILITY PLANNING: Each [~~four year university and two year college must have~~] public post-secondary institution and special school requesting capital outlay funding from the state of New Mexico shall maintain on file [~~at the higher education~~] with the department a current five-year institutional capital 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~~

DRAFT

~~institutional plan, but must be provided in full for each branch campus~~]. The plan must be submitted to the department following the requirements as outlined in the department's instruction manual for annual capital outlay funding requests. The institutional plan shall also be consistent with the project information requirements established by the department of finance and administration for infrastructure capital improvement plan (ICIP) submissions. For institutions with branch campuses, information for each branch may be incorporated into the main campus plan, provided that complete and separate information for each branch is included.
[~~12/31/1998; 5.3.9.9 NMAC - Rn & A, 5 NMAC 3.9.9, 07/31/2005~~]
[5.3.9.9 NMAC – Rp., 5.3.9.9 NMAC, X/XX/2026]

HISTORY OF 5.3.9 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 430, Capital Budgets-Planning and Funding Recommendations, 2/27/1985.
CHE Rule 430, Capital Budgets-Planning and Funding Recommendations, 10/261990.

History of Repealed Material: [RESERVED]

DRAFT