

## Armijo, Alicia, HED

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**From:** Teresa Costantinidis <tcostan@unm.edu>  
**Sent:** Friday, May 22, 2026 12:58 PM  
**To:** Info, HigherEd, HED  
**Cc:** presidentstokes; Lenaya Montoya  
**Subject:** [EXTERNAL] Submission of Comments on Proposed Revisions to 5.3.9 NMAC and 5.3.10 NMAC  
**Attachments:** UNM\_Comments\_NMHED\_Rulemaking\_5.3.9\_and\_5.3.10.docx

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Dear Alicia,

Attached please find comments from the University of New Mexico regarding the proposed revisions to 5.3.9 NMAC and 5.3.10 NMAC.

We appreciate the Department's work on modernizing and clarifying these provisions and offer the attached recommendations in the spirit of improving consistency, usability, and alignment with current facilities and construction practices.

Please let me know if you have any questions or would like to discuss any of the comments further.

Sincerely,  
Teresa

**Teresa Costantinidis** | Executive Vice President for Finance and Administration  
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May 22, 2026

New Mexico Higher Education Department  
Attn: Alicia Armijo, Coordinator, Constituent Services  
2044 Galisteo Street, Suite 4  
Santa Fe, NM 87505  
Via email: HigherEd.Info@hed.nm.gov

**Re: University of New Mexico Comments on Proposed Rulemaking – 5.3.9 NMAC (Capital Budgets – Planning and Funding Recommendations) and 5.3.10 NMAC (Capital Projects Approval)**

Dear Ms. Armijo:

The University of New Mexico (UNM) appreciates the opportunity to comment on the New Mexico Higher Education Department's (NMHED or Department) proposed rulemaking concerning capital planning and capital project approvals. UNM supports the Department's efforts to modernize these rules, align approval thresholds with those of the State Board of Finance, and implement the provisions of House Bill 8 (2026), which established the Higher Education Major Projects Fund. The comments below are intended to strengthen the rules, ensure alignment with industry practice, and identify implementation issues that warrant the Department's consideration.

**I. 5.3.9 NMAC – Capital Budgets, Planning and Funding Recommendations / Implementation of House Bill 8**

UNM appreciates the Department's work to operationalize House Bill 8 (2026) and the new Higher Education Major Projects Fund. UNM also appreciates the improved structure of the proposed rule, the expanded definitions, and the clearer articulation of review criteria, all of which support institutional planning and prioritization. As the Department develops the procedures, matching requirements, and eligibility standards for the Fund, UNM respectfully offers the following technical comments and raises concerns regarding the practical application of HB 8. UNM recognizes that some of these issues stem from the underlying statute, but believes the Department's rulemaking record is an appropriate forum to identify implementation challenges and to encourage flexibility in the rules where the statute permits.

**A. Section 5.3.9.7(M) NMAC (Definitions) – “Student Housing”**

UNM recommends a minor but important revision to the proposed definition of “student housing” in Section 5.3.9.7(M) NMAC. Specifically, UNM suggests changing “any residential facility owned by” to “any residential facility operated by.” This change more accurately captures the range of residential facilities that serve students at public post-secondary institutions, including facilities developed through public-private partnerships or other delivery models in which the institution operates the housing but does not directly hold title to the underlying real property.

#### **B. Section 5.3.9.8(B) NMAC (Eligible Projects) – Campus Utility Infrastructure and Energy Transition Projects**

Given the growing scale and complexity of institutional energy transition projects, UNM recommends that the Department further clarify in Section 5.3.9.8(B) NMAC that campus-wide utility modernization and energy transition initiatives may qualify as eligible projects under the “Physical Plant” category. To reduce future interpretive uncertainty, UNM recommends expressly recognizing projects such as geothermal conversion systems, campus electrification initiatives, district energy modernization, thermal distribution replacement, and large-scale utility resiliency projects as eligible institutional infrastructure investments. Express recognition of these categories would provide institutions and the Department with a shared understanding of how essential utility and decarbonization investments fit within the eligibility framework.

#### **C. Section 5.3.9.8(B) NMAC (Eligible Projects) – Multi-Use Athletic and Wellness Facilities**

UNM also requests that the Department consider language clarifying the treatment of mixed-use athletic and wellness facilities, particularly those in which substantial portions of the project support broader institutional or student functions beyond intercollegiate athletics. Many modern facilities serve recreation, student health and wellness, instructional programs, and community use in addition to intercollegiate athletics. Clear guidance on how the Department will evaluate the eligibility of such mixed-use projects, including whether eligibility may be assessed by use, square footage allocation, or other criteria, would help institutions design and propose projects that align with both the Department’s expectations and broader institutional missions.

#### **D. Graduation Rate Eligibility Metric**

HB 8 conditions eligibility for funding on a six-year graduation rate for first-time, full-time freshmen of sixty-five percent or higher, or alternatively, a graduation rate for the most recent year that exceeds the average of the previous three years. UNM understands that this metric is institution-wide and is not specific to athletics.

From an athletics perspective, this institution-wide metric is not the standard by which intercollegiate athletics programs are evaluated. NCAA member institutions are held to athletics-specific academic measures, including the Graduation Success Rate (GSR) and the Academic Progress Rate (APR). While athletics certainly contributes to overall institutional graduation outcomes, the broader six-year graduation rate is largely outside the control of an athletics department. UNM is concerned that conditioning athletics-related capital project funding on an institution-wide metric, rather than on the established NCAA academic measures, may not be the most appropriate eligibility standard for athletics facility projects.

To the extent the Department has discretion in implementing the eligibility provisions of HB 8, UNM encourages the rule to recognize NCAA GSR and APR as appropriate complementary measures of academic performance for athletics-related projects, or, at a minimum, to clarify how the institution-wide metric will be applied in cases where the proposed project supports an athletics program subject to its own federally and nationally recognized academic standards.

### **E. Fifty-Percent Match Requirement**

HB 8 requires institutions to provide a fifty-percent match for projects funded through the Higher Education Major Projects Fund. For projects of \$50 million or greater, the scale anticipated for major capital initiatives, including athletics facilities, generating a match of \$25 million or more presents a significant challenge, particularly when philanthropic and other non-state sources are the principal options available.

UNM respectfully requests that the Department's rules clarify the sources of funding that may be applied toward the required match. Specifically, UNM asks the Department to confirm in the rule, or in implementing guidance, whether standard capital outlay appropriations (for example, severance tax bond or general fund capital appropriations directed to the institution) may be counted toward the institutional match. Clarity on this point is essential for institutions to plan realistically for participation in the Major Projects Fund and to ensure that the Fund can achieve its intended purpose of supporting significant capital investments across New Mexico's public post-secondary institutions.

## **II. 5.3.10 NMAC – Capital Projects Approval**

### **A. Section 5.3.10.7 NMAC (Definitions) – “Renovation” and “Remodel”**

UNM respectfully recommends revising the proposed definitions of “renovation” and “remodel” in Section 5.3.10.7 NMAC. As drafted, the definitions do not align with common industry usage and effectively invert the relationship between the two terms. In practice, renovation is generally the narrower concept, while remodel refers to broader alterations involving layout, configuration, or use changes.

UNM proposes the following definitions:

- Renovation: Updating, restoring, or repairing an existing space to improve condition or performance without materially changing its layout or intended use.
- Remodel: Alteration of a space that changes its layout, configuration, or function, potentially involving structural modifications.

These revisions would better align the rule with standard facilities, design, and construction terminology and help ensure consistent classification across agencies and institutions.

UNM also recommends including illustrative examples or decision criteria, either in rule text or implementing guidance, such as:

- Remodel: Converting office space into classrooms or laboratories, reconfiguring student services areas, or changing the functional use of a facility.
- Renovation: Fire alarm or accessibility upgrades, modernization of lighting or building systems, or other repairs and updates that do not substantially change the primary use of the space.

**B. Section 5.3.10.8 NMAC (Principles and Procedures) – Approval Thresholds**

UNM supports the proposed increases to the approval thresholds in Section 5.3.10.8 NMAC and the Department’s decision to align those thresholds with the State Board of Finance’s procedures, as amended in 2025 through 2.70.4 NMAC. The previous thresholds were significantly out of step with current construction costs, and the proposed alignment will streamline the approval process while preserving meaningful Department oversight of larger projects. This change will help reduce administrative burden for institutions and the Department while maintaining appropriate oversight of larger, more complex projects.

UNM further recommends that the Department incorporate a mechanism requiring periodic review and adjustment of the approval thresholds, for example, every four years. Without periodic adjustment, inflationary escalation will continue to erode the practical effectiveness of the thresholds, increasing administrative burden on institutions and the Department and slowing project delivery for relatively routine projects. A periodic review mechanism would preserve the benefits of the current modernization effort over time and avoid the need for future ad hoc rulemaking.

UNM also notes that peer states generally utilize significantly higher approval thresholds for institutional capital projects, as illustrated in the table below:

State	Capital Project Approval Threshold	Source
Texas	\$10M (major projects)	Texas Higher Education Coordinating Board, Rules & Statutes
Arizona	\$10M (major projects)	Arizona Board of Regents Policy Manual
Utah	\$500K (new) / \$3.5M (renovation)	Utah System of Higher Education Policy
Colorado	\$2M+	Colorado House Bill 16-1459

This comparison underscores the value of building a periodic review mechanism into the rule so that New Mexico’s thresholds remain reasonable relative to peer institutions and current construction market conditions.

**C. Section 5.3.10.9(F) NMAC (Information to be Submitted) – 90% Construction Document Requirement**

UNM has significant concerns regarding the proposed requirement in Section 5.3.10.9(F) NMAC that construction documents be at least ninety percent complete prior to submission for approval for major construction, major remodel, or major renovation projects. This requirement would shift the Department's approval very late into the design process and would likely create unintended delays in project initiation and delivery.

From an operational perspective, waiting until ninety percent completion before Department review could extend the pre-construction timeline, delay procurement and bidding processes, increase costs due to prolonged design phases, and push project delivery timelines back by approximately three months or more. At ninety to ninety-five percent completion, projects are effectively ready for bidding and construction, substantial design expenditures have already been incurred, and institutions have limited ability to make meaningful scope or budget adjustments in response to Department feedback. Because construction contracts and expenditures cannot proceed until approvals are complete, this requirement would create unnecessary schedule compression and delay.

UNM recommends that the Department either retain the existing language in Section 5.3.10.9(F) NMAC or, if a specific completion threshold is preferred, reduce the requirement to seventy-five percent completion for construction documents. A seventy-five percent threshold would provide sufficient design maturity for meaningful Department review while still enabling efficient project progression and better aligning with standard project delivery practices.

#### **D. Section 5.3.10.12 A. (3) Revision Thresholds**

UNM recommends reconsideration of the \$100,000 threshold in Section 5.3.10.12(A)(3). While the ten percent standard remains appropriate, the fixed-dollar threshold no longer reflects current construction costs or the larger scale of contemporary capital projects.

Given the increase in project and funding thresholds over time, UNM recommends increasing the \$100,000 benchmark to \$300,000 to better align with current project economics and to avoid unnecessary resubmissions for relatively minor cost fluctuations.

#### **E. Administrative Burden and Approval Sequencing**

UNM encourages the Department to continue evaluating opportunities to streamline review processes for routine renovation and infrastructure projects that do not materially alter institutional mission, space inventory, or long-term operating obligations. As currently structured, a significant number of operational renewal and deferred maintenance projects require formal state-level review, which can extend delivery timelines, delay urgent infrastructure replacement, and increase project escalation costs.

UNM respectfully recommends that the Department consider expedited review pathways, delegated staff approval authority for recurring infrastructure renewal, or categorical exemptions for limited-scope deferred maintenance projects. Such approaches would allow the Department to focus its review capacity on projects with the greatest strategic and fiscal impact while improving institutional responsiveness to aging infrastructure conditions.

### III. Conclusion

UNM appreciates the Department's consideration of these comments and its continued partnership with the state's public post-secondary institutions. UNM supports the overall direction of the proposed amendments and respectfully requests that the Department consider the revisions and clarifications described above. UNM would welcome the opportunity to discuss these comments further with Department staff and stands ready to provide additional information as needed.

Thank you for the opportunity to provide input on this important rulemaking.

Sincerely,

A handwritten signature in blue ink that reads "Teresa A. Costantinidis". The signature is fluid and cursive, with the first name being the most prominent.

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**cc:** Garnett Stokes, President, University of New Mexico  
Lenaya Montoya, Government Relations, University of New Mexico