FALL 2015

THINK NEW MEXICO

A RESULTS-ORIENTED THINK TANK SERVING NEW MEXICANS

THE STORY OF THE CHRISTMAS TREE BILL

FIXING PUBLIC INFRASTRUCTURE SPENDING IN NEW MEXICO

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THINK NEW MEXICO

A Results-Oriented Think Tank Serving New Mexicans

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About Think New Mexico

Think New Mexico is a results-oriented think tank whose mission is to improve the quality of life for all New Mexicans, especially those who lack a strong voice in the political process. We fulfill this mission by educating the public, the media, and policymakers about some of the most serious challenges facing New Mexico and by developing and advocating for effective, comprehensive, sustainable solutions to overcome those challenges.

Our approach is to perform and publish sound, nonpartisan, independent research. Unlike many think tanks, Think New Mexico does not subscribe to any particular ideology. Instead, because New Mexico is at or near the bottom of so many national rankings, our focus is on promoting workable solutions.

Results

As a results-oriented think tank, Think New Mexico measures its success based on changes in law we help to achieve. Our results include:

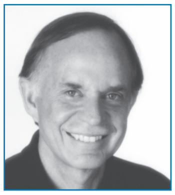
- Making full-day kindergarten accessible to every child in New Mexico
- Repealing the state's regressive tax on food and successfully defeating efforts to reimpose it
- Creating a Strategic Water Reserve to protect and restore the state's rivers
- Establishing New Mexico's first state-supported Individual Development Accounts to alleviate the state's persistent poverty
- Redirecting millions of dollars a year from the state lottery's excessive operating costs to full-tuition college scholarships
- Reforming title insurance to lower closing costs for homebuyers and homeowners who refinance their mortgages
- Winning passage of three constitutional amendments to streamline and professionalize the Public Regulation Commission (PRC)
- Modernizing the state's regulation of taxis, limos, shuttles, and movers
- Creating a one-stop online portal to facilitate business fees and filings
- Establishing a user-friendly health care transparency website where New Mexicans can find the cost and quality of common medical procedures at any of the state's hospitals

Think New Mexico's Board of Directors

Consistent with our nonpartisan approach, Think New Mexico's board is composed of Democrats, Independents, and Republicans. They are statesmen and stateswomen, who have no agenda other than to see New Mexico succeed. They are also the brain trust of this think tank.

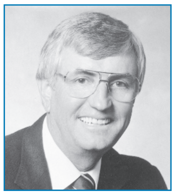
Clara Apodaca, a native of Las Cruces, was First Lady of New Mexico from 1975–1978. She served as New Mexico's Secretary of Cultural Affairs under Governors Toney Anaya and Garrey Carruthers and as senior advisor to the U.S. Department of the Treasury. Clara is a former President and CEO of the National Hispanic Cultural Center Foundation.

Jacqueline Baca has been President of Bueno Foods since 1986. She helps teach a class about family businesses at the University of New Mexico, where she received her MBA. Jackie was a founding board member of Accion and has served on the boards of the Albuquerque Hispano Chamber of Commerce, the New Mexico Family Business Alliance, and WESST.



Paul Bardacke served as Attorney General of New Mexico from 1983–1986. Paul is a Fellow in the American College of Trial Lawyers and he currently handles complex commercial litigation and mediation with the firm of BardackeAllison. In 2009 and 2013, Paul was appointed by President Obama to serve on the National Park System Advisory Board.

David Buchholtz has advised more than a dozen Governors and Cabinet Secretaries of Economic Development on fiscal matters. He has served as Chairman of the Association of Commerce and Industry and was appointed to the Spaceport Authority Board of Directors by Governor Susana Martinez. David is Of Counsel to the Rodey law firm.



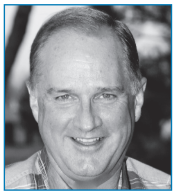
Garrey Carruthers served as Governor of New Mexico from 1987–1990 and is now President of New Mexico State University, where he previously served as Dean of the College of Business. Garrey was formerly President and CEO of Cimarron Health Plan and he serves on the board of the Arrowhead economic development center in Las Cruces.

LaDonna Harris is Chair of the Board and Founder of Americans for Indian Opportunity. She is also a founder of the National Women's Political Caucus. LaDonna was a leader in the effort to return the Taos Blue Lake to Taos Pueblo. She is an enrolled member of the Comanche Nation.

Edward Lujan is the former CEO of Manuel Lujan Agencies, the largest privately owned insurance agency in New Mexico. Ed is also a former Chairman of the Republican Party of New Mexico, the New Mexico Economic Development Commission, and the National Hispanic Cultural Center of New Mexico, where he is now Chair Emeritus.

Liddie Martinez is a native of Española whose family has lived in northern New Mexico since the 1600s. She is Community and Economic Development Director for Day and Zimmerman, a major contractor with Los Alamos National Laboratory, and also farms the Rancho Faisan. Liddie has served as Board Chair of the Los Alamos National Laboratory Foundation.

Brian Moore is a small businessman from Clayton, where he and his wife own Clayton Ranch Market. Brian was a member of the New Mexico House of Representatives from 2001–2008, where he served on the Legislative Finance Committee. From 2010–2012, Brian worked as Deputy Chief of Staff and Washington, D.C. Director for Governor Susana Martinez.



Fred Nathan founded Think New Mexico and is its Executive Director. Fred served as Special Counsel to New Mexico Attorney General Tom Udall from 1991–1998. In that capacity, he was the architect of several successful legislative initiatives and was in charge of New Mexico's lawsuit against the tobacco industry, which resulted in a $1.25 billion settlement for the state.

Roberta Cooper Ramo is the first woman elected President of the American Bar Association and the American Law Institute. Roberta has served on the State Board of Finance and was President of the University of New Mexico Board of Regents. In 2011, she was inducted into the American Academy of Arts and Sciences. Roberta is a shareholder in the Modrall law firm.

Dear New Mexican:

Because Think New Mexico is an organization that likes to help fix things that are broken, New Mexico's "unique" system for allocating taxpayer dollars to public infrastructure projects caught our attention.

As a large state with lots of infrastructure challenges, like crumbling roads and failing water systems, New Mexico needs to spend its capital outlay dollars as efficiently as possible.

Yet the system that has prevailed for nearly four decades has been described by one sitting legislator, Senator Pete Campos, as "archaic, parochial, and highly political." Likewise, *Governing* magazine noted that the way New Mexico selects infrastructure projects for funding makes "a sensible ordering of priorities…next to impossible."

As always, Think New Mexico focuses on diagnosing problems and developing solutions. So if you are looking for blame in these pages, you will be disappointed. Indeed, it is important to recognize that the governor and 110 of the 112 legislators serving today were not in office when the current system for public infrastructure spending was invented in the 1977 "Christmas Tree Bill."

Governor Susana Martinez and many legislators from both parties have called for reform of our capital outlay system, but reform has proven to be elusive. Unfortunately, the governor and legislators find themselves trapped in a bad system that none of them acting alone can fix.

Our hope in developing this report is that, as an independent third party that is not a member of the executive or legislative branches, Think New Mexico might be able to help facilitate the enactment of some common sense solutions.

If this effort succeeds, we will not only improve our essential infrastructure, but also create new jobs and make New Mexico more economically competitive.

During the process of researching this report, we consulted with experts in New Mexico, like Linda Kehoe at the Legislative Finance Committee and Debbie Romero at the Department of Finance and Administration. We also consulted with several out-of-state experts. They are listed in the acknowledgments inside the back cover.

In addition, we reviewed studies of how other states set priorities for infrastructure spending. We closely examined the statutes of other states and completed extensive historical research on how the Christmas Tree Bill evolved here in New Mexico. All of our sources can be found in the bibliography at the end of this report.

My co-author, Kristina Fisher, and I were greatly assisted by our two colleagues. Othiamba Umi led our fact-checking efforts and is building a broad coalition to support our recommended reforms. Meanwhile, Jennifer Halbert coordinated the printing and distribution of this report.

A half dozen talented college and graduate student interns from across New Mexico also provided invaluable assistance. They are: Seth Barany of Las Cruces and the University of New Mexico; Naftali Burakovsky of Los Alamos and the University of California; Julia Downs of Albuquerque and New Mexico State University; Noel Martinez of Las Cruces and New Mexico State University; Ellen Rabin of Los Alamos and the University of Chicago; and Michael Sedillo of Santa Fe and Columbia University.

If you would like to become involved in this effort to reform public infrastructure spending in New Mexico, I encourage you to visit our website at www.thinknewmexico.org, where you can sign up for email updates and contact your legislators and the governor. You are also invited to join the more than a thousand New Mexicans who invest in Think New Mexico's work by sending a contribution in the enclosed reply envelope.

Fred Nathan

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Jennifer Halbert
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Fred Nathan
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Othiamba Umi
Field Director

NEW MEXICO'S PUBLIC INFRASTRUCTURE CRISIS

New Mexicans experience the effects of our failed infrastructure funding system every day as we turn on the faucets in our homes, drive to work, or enter a public building.

Infrastructure projects – like roads, bridges, dams, water systems, university classrooms, and courthouses – are essential to New Mexico's economy and to our quality of life. Thanks to tax revenues from the state's plentiful natural resources like oil and gas, we have the money to pay for these critical infrastructure needs.

However, the results of that spending are not always what taxpayers would rightfully expect, as illustrated by a sampling of recent infrastructure projects from just one corner of New Mexico.

To begin with, there is Cabresto Lake Dam near Questa, which underwent major repairs that were finished in 2014. The repairs took nearly a decade to complete and cost taxpayers more than $6.7 million, yet the Cabresto Lake Dam still leaks. This, of course, is extremely disappointing to downstream residents and farmers who depend on the dam to store irrigation water. As state Senator Carlos Cisneros told the *Taos News*, "We have a dam and it's not a bad looking dam except that it doesn't hold water."

Cabresto Lake Dam. Photo by J. R. Logan, Taos News, 2015.

The shell of the half-finished Mora County Courthouse. Photo by Sandra Fish, New Mexico in Depth, 2015.

Sadly, this is not an isolated example. A December 2014 report by the Legislative Finance Committee (LFC) examined a series of state water projects and found funding and oversight fragmented, with the risk for waste high. Only ten percent of the nearly $27 million worth of projects succeeded in terms of fully achieving the goal of the project.

Meanwhile, 80 miles to the south of Cabresto Lake Dam, the partially built Mora County Courthouse sits idle behind a chain-link fence while county employees continue to work out of trailers. This county of fewer than 5,000 people voted to approve a bond for $2.65 million toward the project more than a decade ago. The Legislature appropriated $1 million in the capital outlay (i.e., infrastructure funding) bills of 2006 and 2007 and another $200,000 in 2008, but by 2009 the cost of the project had grown from $7.25 million to $12.1 million. *New Mexico In Depth*, a nonprofit investigative media outlet, described the Mora County Courthouse recently as "the ultimate monument to problems with New Mexico's often-piecemeal approach to capital projects."

While Mora County has been waiting for a new courthouse for a decade, nonessential projects often are able to snag funding in a single legislative session. For example, in nearby Peñasco, the Legislature appropriated $1.5 million in the 2015 special session to construct a new Department of Transportation facility that a local legislator conceded was "not really needed."

These cases from north central and northeastern New Mexico are, unfortunately, typical of the whole state. The state's most recent report card from the American Society of Civil Engineers, published in 2012, gave New Mexico a grade of C overall, with D+ for flood control and aviation infrastructure. New Mexico's aviation, rail, and road infrastructure had all worsened since the last report card was completed in 2005.

A 2015 report by The Road Information Program (TRIP) calculated the cost of bad roads to individual drivers and found that New Mexican drivers pay $752 million – $526 per driver – a year in unnecessary vehicle repair costs as a result of driving on roads in poor condition.

These problems are not due to a lack of awareness of the state's infrastructure needs. Cities and counties across New Mexico, as well as state agencies, carefully develop and provide policymakers with annual plans that prioritize their infrastructure needs over the next four years.

Yet when a *New Mexico In Depth* reporter analyzed the capital outlay bill from the 2014 session, she found that 453 out of the 852 projects funded in the bill, or more than half, were not part of any of the long range infrastructure plans filed with the state by state agencies and local governments.

New Mexico's Infrastructure Grades in 2005 and 2012

CATEGORY	2005 GRADE	2012 GRADE
Aviation	C-	D+
Flood Control	D+	D+
Drinking Water	—	C-
Bridges	—	C-
Rail	B	C
Roads	B-	C
Solid Waste	C	C
Waste Water	—	C
Transit	C	C+
Schools	C-	B-
Composite	C	C

Source: American Society of Civil Engineers, State of New Mexico Section. Infrastructure Report Card, 2012. Dashes indicate a category was not evaluated in 2005.

So it is not surprising that New Mexico's system for financing public infrastructure receives consistently low grades from researchers who study and compare how states make infrastructure spending decisions. For several years starting in 1999, the Maxwell School of Citizenship and Public Affairs at Syracuse University partnered with *Governing* magazine to conduct the Government Performance Project, an evaluation of each state's management performance.

In the initial 1999 analysis, *Governing* magazine described New Mexico's system of capital management as "unique" and stated that our approach to infrastructure spending made "a sensible ordering of priorities next to impossible."

New Mexico was awarded a D, second worst in the nation (after Alabama, which lacked a capital budget or even an inventory of the state's capital assets).

Similarly, in 2005, *Governing* magazine wrote: "capital planning is a virtual oxymoron in New Mexico…the result is that many capital projects are chronically underfunded, leading to construction delays or the abandonment of projects altogether." That year New Mexico received a D+ in the infrastructure management category; once again only Alabama scored worse with a D.

Not much has changed since then. After the tortured failure of the capital outlay bill during the 2015 regular session, legislators from both political parties and Governor Martinez issued calls for reform, and the *Taos News* spoke for many across New Mexico when they wrote in an editorial:

> "We want lawmakers to take a serious look at reforming a process that is the very definition of pork barrel politics. Stop piecemeal funding major and urgent infrastructure projects. Start prioritizing funding based on need rather than friendship with lobbyists. It's our money."

The need to re-think and reform how we fund our infrastructure is pressing. A recent report by the New Mexico Department of Finance and Administration projects that New Mexico will spend over $4 billion for state and local infrastructure over the next five years.

In this report we describe the challenges that threaten to divert those dollars away from urgent state priorities and we lay out a roadmap for draining the politics out of the process. First, however, it is important to understand how New Mexico's "unique" system of infrastructure funding came to be.

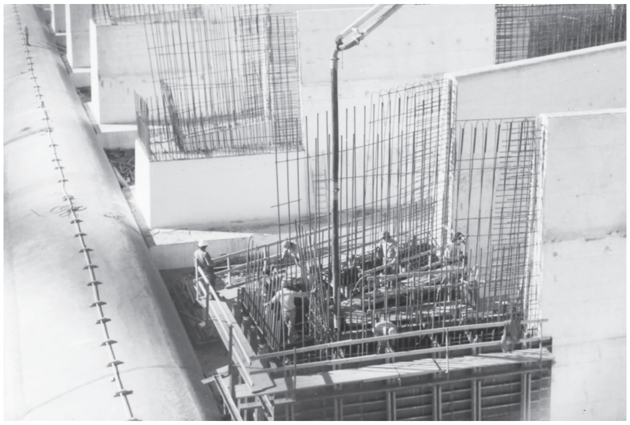
A CHRISTMAS TREE GROWS IN SANTA FE

In 1961, the Legislature was desperately searching for a funding source to construct a dam and reservoir on the Canadian River in the eastern part of the state that would capture water before it reached the Texas border. The project was expected to cost $5 million.

Ultimately, the Legislature unanimously passed a bill allowing the state to issue bonds (i.e., borrow money) that would be paid back with revenues generated by the state's severance taxes. These are the taxes on minerals and resources severed from the earth, like oil, gas, coal, and timber, which the state has been collecting since 1937.

An editorial in the February 3, 1961 *Santa Fe New Mexican*, entitled "Let's Save That Canadian Water," noted the symmetry of using a tax on one natural resource (oil, gas, and minerals) to pay for the development of another natural resource (water): "The most fitting use for this tax money is the preservation of other precious resources."

New Mexico's Territorial Capitol Building, built in 1886 with general obligation bond revenues. Photo by J. R. Riddle, Courtesy Palace of the Governor's Photo Archives (NMHM/DCA) #076041.



Workers upgrade Ute Dam on the Canadian River in 1983. Photo by Jerry Wilhite for the Bureau of Reclamation.

The project that became Ute Dam followed in the tradition of New Mexico's earliest public spending projects. In 1884, nearly three decades before statehood, New Mexico's Territorial Legislature authorized the issuance of general obligation bonds in the amounts of $200,000 and $150,000 to construct a territorial capitol and a territorial penitentiary in Santa Fe. The bondholders were paid back over a quarter of a century using funds raised from a tax on all property owners in the New Mexico Territory.

In territorial times and early statehood, the Legislature authorized bonds for big, important, and essential public infrastructure projects, and did not begin a new project and authorize a new bond until the bond for the previous project had been retired.

New Mexico's capitol and penetentiary construction projects were followed by road-building, which the state paid for with bonds issued in 1913 and 1921. Highway bonds paid back with taxes on gasoline and motor vehicle license fees continue to be the primary way New Mexico funds road construction and maintenance today.

A BRIEF PRIMER ON BONDS

Public bonds work much like a homeowner taking out a loan from a bank to pay for a home renovation project that the homeowner cannot afford to pay in the short term. The difference is that a government takes out the loan by issuing a bond, and the money comes not from a bank but from investors who buy the bonds. The government re-pays bondholders, with interest, from tax revenues.

General obligation bonds, paid back with property taxes, continue to be a significant source of funding for public infrastructure projects today. The New Mexico constitution requires that projects that are funded with general obligation bonds must first be approved by voters during an election.

Under the Severance Tax Bonding Act, the state government collects taxes on oil, gas, minerals, and timber and places the money into a Severance Tax Bonding Fund. Then the state issues bonds, paid back over ten years, to fund public infrastructure projects. Money left over after paying off the bonds is transferred to the Severance Tax Permanent Fund, which generates interest to help support the annual budget of the state.

Unlike general obligation bonds, the projects funded with severance tax bonds do not require voter approval. On average, severance tax bonds account for nearly four times as much money as general obligation bonds, which average $160 million every other year.

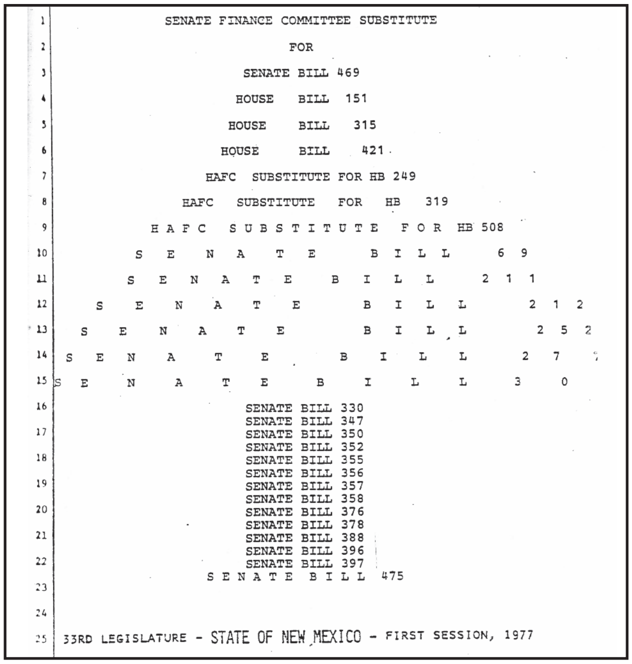
Although the original intent of the 1961 legislation was to use severance tax bonds in the same way as general obligation and highway bonds (i.e., for large and urgently needed public infrastructure projects, like the Canadian River dam and reservoir), that suddenly changed toward the end of the 1977 legislative session with the debut of the first "Christmas Tree Bill."

This bill, which was cooked up in the Senate Finance Committee, was a "committee substitute," a merger of 27 separate House and Senate bills seeking capital outlay funding. (Until then, public infrastructure projects "were requested in individual bills, which had to make it through the entire legislative process as distinct bills," according to a Legislative Council Service analysis.)

According to an account from the *Hobbs News Sun*, the bill was nicknamed the Christmas Tree Bill because it contained "a present in it for everyone." Just to make sure that no legislator missed that fact, the text on the cover of the Christmas Tree Bill was even formatted in the shape of a tree.

The bill moved so quickly and with so little in the way of public hearings and scrutiny that reporters at the time pegged the cost variously at $117.2 million (*Las Cruces Sun News*), $118.7 million, (*Albuquerque Journal*), $125 million (*Hobbs News Sun*) and $126 million (*Lovington Daily Leader*). No matter how one calculated it, it was easily the largest public infrastructure bill in state history up to that time.

The Christmas Tree Bill first appeared with only about two days left in the 60-day session, but the lengthy bill nevertheless passed unanimously. The day after the session concluded, an article in the *Las Cruces Sun News* asked rhetorically, "Who



SENATE FINANCE COMMITTEE SUBSTITUTE

FOR

SENATE BILL 469

HOUSE BILL 151

HOUSE BILL 315

HOUSE BILL 421

HAFC SUBSTITUTE FOR HB 249

HAFC SUBSTITUTE FOR HB 319

H A F C S U B S T I T U T E F O R HB 508

S E N A T E B I L L 6 9

S E N A T E B I L L 2 1 1

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33RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1977

The cover page of the 1977 Christmas Tree bill.

votes against a capital improvements…bill with their coveted project in it? Obviously, nobody."

Projects funded by the bill ranged from $23 million for new construction and improvements at a half dozen prisons to much smaller projects, like $25,000 for improvements at the Governor's Mansion and mini-projects such as $5,000 for the "initial development of a state park in Guadalupe County." Altogether, the Christmas Tree Bill funded 119 projects across the state.

Amidst the celebrations and merriment that followed the Christmas Tree Bill's passage in 1977, an unlikely source sounded a serious note of caution. That was the main sponsor and architect of the legislation, Senator Aubrey Dunn, a conservative Democrat from Alamogordo. Dunn was the powerful Senate Finance Committee Chairman and one of the most influential and respected legislators of his era. While pleased that his bill passed, Senator Dunn tempered his post-session remarks by conceding that the Christmas Tree Bill demonstrated that Legislature had still "not found a good way to distribute [public infrastructure] money to the places and cities that need it."

The Christmas Tree Bill has now become something of an annual tradition, as the Legislature has introduced one every year since 1977.

As the Christmas Tree Bills have grown in size, so have the concerns about their failure to prioritize projects and direct capital outlay dollars to where they are most needed, as Senator Dunn had warned. For example, Bruce King struggled to get statewide infrastructure needs funded during his second term as Governor from 1979–1982. At the time, King remarked in his insightful and inimitable way:

> "State officials and legislative leaders need to reassess the current system and get behind the 8-ball to be more responsible about their capital outlay spending because the state's infrastructure is rapidly deteriorating and it could have a real detriment on economic development and jobs in the state."

These words ring even truer today, but unfortunately, the solution that Governor King and the legislature developed as a compromise made matters worse: they decided to split the baby into thirds.

Specifically, they decided that the Governor, the Senate, and the House would each receive a third of the Christmas Tree proceeds to allocate in their sole discretion. It was understood that the Governor would use his or her third to fund statewide public infrastructure needs, while the House and Senate would distribute their respective one-third shares to their 112 members to be spent in each legislators'

Christmas Tree Bills 2000–2015

YEAR	DOLLARS *(in millions)*	NUMBER OF PROJECTS
2000	$113.1	1,193
2001	VETOED	VETOED
2002	$183.5	1,536
2003	$158.2	2,172
2004	$353.6	2,582
2005	$472.8	3,634
2006	$860.9	4,274
2007	$721.6	3,103
2008	$341.2	1,780
2009	$140.0	143
2010	$45.7	49
2011	$86.5	123
2012	$114.4	535
2013	$269.4	792
2014	$228.7	852
2015	$295.0	994
TOTAL	$4,384.6	23,762

Source: Legislative Council Service, Highlights 2000–2015, "Capital Outlay Projects by County," and Legislative Finance Committee, Post-Session Fiscal Reviews, 2003–2015. Compiled by Think New Mexico.

district, as he or she saw fit. (From time to time some legislators pool their shares to pay for larger projects, but in most cases the money is spent in relatively tiny slivers within each legislative district.)

Today the system for allocating public infrastructure spending in New Mexico remains much the same as it was in the early 1980s, with a single large bill containing hundreds of individual projects passed in the waning hours of the session.

As the chart to the left illustrates, from 2000–2015 the Christmas Tree Bill has averaged nearly $300 million a year and contained an average of almost 1,500 individual projects. It peaked in 2006 with over $850 million and more than 4,000 projects. The Great Recession caused a steep decline, but the amount of money and number of projects have been climbing steadily since then.

However, the system is becoming increasingly contentious. Over the past two decades, there have been six costly special sessions called primarily to pass capital outlay bills (in 1996, 1997, 1999, 2000, 2011 and 2015) because of various conflicts over the Christmas Tree Bill between the Governor and the Legislature, the House and Senate, and Democrats and Republicans that could not be resolved during the regular session.

Dissatisfaction with this process of allocating public infrastructure funding through the Christmas Tree Bill seemed to reach new heights during the 2015 regular session, which dissolved into what *New Mexico In Depth* described as a "cloud of partisan bickering and finger-pointing." It was only after months of conflict that the Legislature finally reconvened to pass a $295 million Christmas Tree Bill in yet another special session.

THE URGENT NEED FOR REFORM

The saga of the 2015 Christmas Tree Bill illustrates many of the problems that have plagued New Mexico's infrastructure spending since the late 1970s.

Politics Overwhelm Priorities

This year's Christmas Tree Bill failed to pass during the regular session due to a showdown between Democrats and Republicans over how the money should be divvied up. This is not uncommon. When there are no objective criteria for selecting priorities, the content and ultimately the passage of the Christmas Tree Bill becomes a test of political wills between Democrats and Republicans (the cause of special sessions in 1997, 2000, 2011 and 2015) and between the Governor and the Legislature (the cause of special sessions in 1996 and 1999). Without major reform, it is likely that special sessions to pass the Christmas Tree Bill will become the norm and a continuing unnecessary expense for taxpayers.

Of the fifty states, New Mexico is the only one that allows elected officials to take the public infrastructure budget and divide it up based on a political formula, according to an analysis by *New Mexico In Depth*. In the 2015 Christmas Tree Bill, each of the 42 senators received $1 million and each House member received $600,000, for a total of $42 million for each chamber and a grand total of $84 million for the legislature as a whole. (The remaining dollars in the bill went to statewide projects.)

A 1999 *Albuquerque Journal* editorial described the process that produces the Christmas Tree Bill as "essentially a dividing of the spoils," and concluded: "It is an overt acknowledgement that political gain is more important than people's needs." More recently, Michael Pagano, a professor in the Department of Public Administration at the University of Illinois and a national expert on state capital budgeting said that New Mexico's annual Christmas Tree Bill "would be the illustration about how not to do capital improvement planning."

Cartoon by John Trever, copyright May 17, 2015. Reprinted with permission.

Past reform efforts have focused more on changing the political equation than a comprehensive overhaul. For example, legislative leaders used to receive more Christmas Tree dollars than rank and file legislators, and members of the majority party received more than members of the minority party. Following a reform push in the early 2000s, each member of each chamber now receives the same share whether or not they are in leadership or belong to the majority party.

While this change may appear superficially fair, it means that each legislative district receives the same amount of capital dollars each year, regardless of the urgency of the district's infrastructure needs.

Meanwhile, legislators still have complaints about the political nature of the Christmas Tree Bill. For example, legislators of both parties charge that governors of both parties have occasionally punished them by vetoing their projects in the Christmas Tree Bill in retaliation for their votes on other bills.

In addition, partisan outside groups (with nonpartisan-sounding names like Better New Mexico PAC and the New Mexico Prosperity Project) used the failure of the 2015 Christmas Tree Bill during the regular session as a way to bludgeon their political opponents.

As a result of this politicization, legislators increasingly find themselves victimized by a system not of their own making.

In 1999, Rep. Tom Taylor wore a pig mask during the debate over the Christmas Tree Bill to protest the "pork" projects. Photo by Sarah Martone, courtesy the *Albuquerque Journal*.

A Perfect Process for Lobbyists

After the 2015 regular session, a Taos House member told the *Taos News* what many in the Roundhouse already know, but what might be surprising to the general public: that in some cases capital outlay projects are placed in the Christmas Tree Bill simply because a lobbyist asked.

They ask a lot. Senate Minority Leader Stuart Ingle joked back in 2006, "The only two people who haven't brought me capital outlay requests are my two ex-wives." (That year, the legislature received 7,692 project requests, totalling over $6 billion, for the available $860 million.)

Indeed, it would be difficult to design a system that could be any better for lobbyists.

To begin with, the process of constructing the Christmas Tree Bill involves little to no transparency. For example, the special session to approve the 2015 Christmas Tree Bill lasted just a few hours, so there was hardly any opportunity for public scrutiny of individual projects. In fact, the text of the bill did not appear online for the public to read until after the session had concluded.

"The manner in which the [Christmas Tree Bill] compromise was hammered out left no opportunity for public input," Susan Boe, Executive Director of the New Mexico Foundation for Open Government, noted of the 2015 special session. "The whole process gave the appearance of government being conducted behind closed doors, which is never good." That is, except for lobbyists.

Christmas Tree Bills have become ideal vehicles for lobbyists with projects that might be controversial in some way. As we noted in the previous section, severance tax bonds, the primary funding source for the Christmas Tree Bill, do not require voter approval. They only need the approval of the legislature and the governor. For this reason, the more popular public infrastructure spending (e.g., libraries, senior citizen centers, and higher education facilities) tends to go into the general obligation bonds, which have to go before the voters, while the more controversial spending that some lobbyists pursue gets tucked into the Christmas Tree Bill.

Christmas Tree Bills generally contain hundreds of individual projects. The 2015 bill contained 994 projects. The more projects the bill contains, the less public scrutiny each project receives.

While passing a bill requires a lobbyist to persuade dozens of legislators on multiple committees in both chambers, as well as the full House and Senate, obtaining capital outlay dollars for a client often means only having to persuade a single legislator. That is because each legislator has near total discretion of how their share is spent. Once a legislator's projects are in the bill, they are rarely questioned or removed.

Moreover, those decisions about which projects legislators choose to fund are generally made in private rather than during public hearings. By contrast, the General Fund budget, which is also passed annually by the Legislature, is developed through multiple public meetings held over many weeks.

This combination of an opaque process and a lack of checks and balances adds up to a perfect process for lobbyists and their clients.

The Disconnect Between Urgent Public Needs and What Actually Gets Funded

Given the influence of politics and lobbyists, perhaps it is not surprising that the Christmas Tree Bill does not always wisely allocate critical public infrastructure dollars.

Each year in advance of the legislative session, every city and county across New Mexico develops individual infrastructure capital improvement plans. These lists of priority projects are then made available to legislators. Unfortunately, "local governments feel that there is a disconnect between [infrastructure capital improvement plans] and what the legislature funds….sometimes the legislature funds a project that a local government either does not want or cannot afford to maintain or operate," as Priscilla Lucero and Hubert Quintana testified to the Legislature, representing the Southwestern and Southeastern New Mexico Economic Development District Councils of Governments. Representatives from the New Mexico Association of Counties and New Mexico Municipal League strongly agree.

Here are a few of the many examples of questionable projects that Ms. Lucero and Mr. Quintana could have provided:

- In 2005, the *Santa Fe New Mexican* reported that a state senator slipped $50,000 into that year's Christmas Tree Bill to pave a private road in Pecos where his friend, a registered lobbyist, happened to live. San Miguel County and the Village of Pecos did not request the appropriation, and protested that using public dollars to pave a private road is illegal.
- A year later, a bipartisan group of senators successfully sponsored $65,000 in Christmas Tree dollars for a public sculpture garden in Santa Fe that was supposed to feature 40-foot tall bronze busts of New Mexico historical figures. Santa Fe County officials terminated the project, which they had not requested, when they could not find the sculptor who had proposed to create the park.
- In 2014, the city of Albuquerque was forced to spend $55,000 to tear down an abandoned, rickety former battery and tire warehouse that had been purchased with $492,000 of Christmas Tree Bill dollars a few years earlier. It had

been intended to be a non-profit flamenco studio that would benefit low-income youth, but the building was uninhabitable when it was purchased. Senator Cisco McSorley told KRQE's Larry Barker, "I think the whole [political] system owes taxpayers an apology."

It is not just local projects pushed by lawmakers but also some bigger projects backed by governors that serve no urgent, public purpose. In 2007, the then-Governor came under attack for backing $4 million of Christmas Tree monies for a Valencia County highway interchange that would have benefitted a California developer who had given $75,000 to his re-election campaign the year before.

Beyond wasting money, these nonessential projects crowd out funding for urgent infrastructure needs.

For example, a 2014 report by the Legislative Finance Committee (LFC), the budget staff for the legislature, highlighted urgent statewide needs that had not made it into that year's Christmas Tree Bill. The list, titled "Significant Statewide Projects Not Funded," included:

- Replacement of obsolete security infrastructure at adult prisons;
- Security and other upgrades at juvenile facilities;
- Security enhancements for magistrate and district courts; and
- Infrastructure upgrades at health and veterans' institutions.

As the State Board of Finance wrote in a 2012 letter to all legislators: "Unfortunately, it has become common practice to ignore critical regional and statewide infrastructure needs, and instead fall victim to a 'grab bag' process whereby limited state capital funds are frittered away on hundreds of earmarked projects after little to no vetting."

In a system that values politics before priorities, urgent statewide needs will always be at a disadvantage to pork.

Incomplete Funding of Projects

Spending on public infrastructure is an effective way to create jobs and boost economic development. The Associated Contractors of New Mexico has estimated that that every $1 billion of capital outlay spending creates 27,000 jobs. That only works, of course, if the money actually gets spent.

This highlights another problem with public infrastructure spending in New Mexico, which is that a significant portion of the money appropriated in the Christmas Tree Bill sits idle for years at a time.

The LFC tracks this information very carefully. In June of this year, the LFC calculated that $311.6 million for 1,337 projects from the 2011–2014 Christmas Tree Bills is currently sitting around unused. That is significantly more than the $184.9 million that has been spent on those projects during that time period.[1]

1] These amounts do not include the 994 projects totalling $295 million that were authorized in the 2015 special session nor do they include any projects funded by general obligation bonds. A 2015 report by the State Auditor put New Mexico's total unspent capital dollars as high as $1.2 billion, but a response by the Department of Finance and Administration noted that roughly half of this amount had been appropriated within the past year and was actively being expended.

Unspent Christmas Tree Bill Dollars 2011–2014			
YEAR BILL PASSED	NUMBER OF UNFINISHED PROJECTS	DOLLARS APPROPRIATED TO THOSE PROJECTS (*in millions*)	AMOUNT UNSPENT IN 2015 (*in millions*)
2011	**30**	**$56.1**	**$12.8**
2012	**100**	**$69.8**	**$18.9**
2013	**506**	**$172.4**	**$105.5**
2014	**701**	**$198.2**	**$174.4**
TOTAL	**1,337**	**$496.5**	**$311.6**

Source: Legislative Finance Committee, June 2015 Quarterly Capital Outlay Update. Compiled by Think New Mexico.

The vast majority of this unexpended money is borrowed – much of it from severance tax bonds. That means taxpayers are, in effect, borrowing money and paying interest on it while it sits there doing nothing.

What is going on here?

Part of the explanation is what the *Albuquerque Journal* called in a 2004 editorial ("Porkfest Continues to Generate Heartburn") the "layaway funding" of projects. For example, a local government might want a project that costs more than their local legislator can provide from his or her share of the Christmas Tree Bill. So the legislator might contribute a portion of the funding each year for several years until the local government has enough money to build the particular project. In the meantime, the money piles up, the project doesn't happen, and no jobs are created.

Another common problem is that the projects are simply not "shovel ready." This was the case with the Alzheimers Skilled Nursing Unit at the Veterans' Home in Truth or Consequences. Since 2007, the legislature has made four separate appropriations for the project, totalling $13.8 million, and often re-appropriating the money when it wasn't spent. The project is still awaiting completion.

A third scenario was described by Senate Finance Committee Chair John Arthur Smith in an opinion editorial he wrote earlier this year advocating for reform: "Quite often, progress stalls because the cost of the project was underestimated or funding was intended only to cover the initial phases of the project." For example, the 2007 Christmas Tree Bill included $1.2 million to design a 30,000 square foot veterans' museum on 33 acres in Las Cruces. Over $765,000 was spent to develop plans for the museum, which are now gathering dust as no funds have ever been appropriated to begin construction.

Ironically, in this system some of the only projects that actually get completed are surprisingly small – such as $500 for equipment at a senior center in Lordsburg or $5,000 for a historical marker in Clovis. Governor Susana Martinez has commented that small projects like football helmets and band instruments "are all really nice things to have. But buying them with bond money does not create jobs."

Moreover, these items often do not last as long as the bonds that are used to pay for them. The result is that we are paying interest on small purchases long after they have been disposed of. The administrative costs of implementing tiny appropriations, such as selling the bonds and monitoring the project, often outweigh the benefits. In some ways, it is a little like taking out a second mortgage to pay for a haircut.

PUTTING PRIORITIES AHEAD OF POLITICS

Although the challenges facing our public infrastructure funding system are daunting, the good news is that there are several highly effective models that the state can look to for reform ideas – both inside and outside New Mexico's borders.

Oklahoma: Drain the Politics

Before 1992, Oklahoma's infrastructure planning and funding process was not much better than New Mexico's. As *Governing* magazine wrote in 1999, "Until 1992, Oklahoma all but pretended that it had no capital management responsibilities. In that year, it created a capital planning commission, which has improved the process enormously."

Oklahoma's Long Range Capital Planning Commission consists of nine members, three appointed by the Governor, three by the President Pro Tempore of the Senate, and three by the Speaker of the House of Representatives. The commission is assisted by staff from the Oklahoma Office of Management and Enterprise Services.

Each year, the commission creates a capital plan that maps out the state's anticipated infrastructure needs over the next eight years. The top priorities in the list are recommended for funding in each year's legislative session.

Projects on the list are ranked using weighted criteria, such as how the project will impact public health and safety, how it will affect service to the public, the urgency of maintenance needs, impact on the state's capital and operating expenses (such as avoiding higher costs that might result from deferred maintenance), and the potential for the project to leverage other funding.

The prioritized list developed by the commission is submitted to the state legislature within the first week of the legislative session. Legislators then have 45 days to remove projects from the list – however, no new projects can be added.

After 45 days, the plan is automatically deemed to have been approved by the legislature and the Office of Management and Enterprise Services can proceed to release funds for the projects.

In 2015, the commission recommended funding 113 projects with a total cost of $384.5 million, meaning the average appropriation per project was about $3.4 million. By contrast, New Mexico's 2015 Christmas Tree Bill spread $295 million across 994 individual projects, for an average of $300,000 per project (less than a tenth the average size of Oklahoma's).

As John Estus, spokesman of the Oklahoma Office of Management and Enterprise Services, explains: "The system we have is designed to keep politics out of it as much as possible." In other words, he notes, it is "the complete opposite of New Mexico's."

Utah: Plan and Prioritize

Michael Pagano, the national expert on state capital budgeting who has criticized New Mexico's capital outlay system, calls Utah a "state with a textbook system for funding capital projects."

That system began in the 1940s with the creation of the eight-member Utah State Building Board. Each year, with the assistance of the staff of the Division of Facilities Construction and Management, the State Building Board works with state agencies and universities to evaluate Utah's capital needs. Each proposed project is ranked using quantitative criteria that consider whether the

Major road reconstruction project completed in Orem, Utah.
Photo courtesy Richard Bart Green, Don Green Photography.

project addresses life or safety issues, accommodates expected growth, enhances program effectiveness, supports critical programs, and is cost-effective, among other things.

These criteria are designed to bring together a diverse array of projects within a single comprehensive plan. For example, the 2015 plan includes projects as different as a children's cancer hospital, a highway maintenance station, a university science building, and a state park campground.

At the end of the process, the Utah State Building Board produces a clear and understandable capital funding plan that prioritizes all of the state's infrastructure needs and explains the justification for each ranking. This plan then becomes the working draft for both the governor and legislature as they appropriate capital dollars. Because Utah statute requires a two-thirds vote of each chamber to fund a project over multiple years, almost every project approved by the legislature is fully funded in a single year.

This careful and comprehensive planning system helps explain why Utah's capital financing system was the only one in the nation to earn an "A" grade from *Governing* magazine in 2005 and 2008.

Models in Other States

Oklahoma and Utah are not alone in designing systems that limit the influence of politics on their infrastructure funding decisions and ensure that urgent priorities are at the front of the line for funding.

Nineteen states (listed on page 20) have established independent commissions designed to put the infrastructure funding process at arm's length from politics. These commissions have memberships appointed by the governor and legislative leadership, or in some cases positions designated for specific officials. For example, Indiana includes the state's Budget Director, while Kansas has a spot that alternates between the Deans of the Colleges of Architecture at Kansas State University and Kansas University.

Another important reform, in place in at least 15 states (including our neighboring state of Colorado), is the development of objective ranking systems. These systems use quantitative, weighted scoring of projects to identify the most urgent capital needs. Some states, like Hawaii and Wyoming, codify the basic criteria in statutes or regulations, while others, like Kentucky and Nebraska, allow the agency responsible for the ranking to develop and define the criteria.

The key features common to the most effective infrastructure funding processes in other states are: (1) development of a comprehensive statewide plan of infrastructure needs, (2) a method for ensuring that the highest-priority projects are fully funded, and (3) independence from politics.

States with Independent Infrastructure Commissions

STATE	COMMISSION	APPOINTED BY	NOTES
Arizona	Joint Committee on Capital Review *(14 members)*	Legislative leadership	Majority and Minority leaders both have appointments
Connecticut	State Properties Review Board *(6 members)*	Legislative leadership	Majority and Minority leaders both have appointments
Hawaii	State Land Use Commission *(9 members)*	Governor, Senate confirms	1 member from each of the state's 4 counties, 5 at-large
Idaho	Permanent Building Fund Advisory Council *(5 members)*	Governor	Must include a contractor, a banker, & a businessperson
Illinois	Capital Development Board *(7 members)*	Governor	No elected officials, no more than 4 from the same party
Indiana	State Budget Committee *(5 members)*	Governor and Legislative leadership	Includes Budget Director, both parties represented
Kansas	State Building Advisory Commission *(7 members)*	Governor, some positions for specific officeholders	Includes a contractor, a union member & Architecture Dean
Kentucky	Capital Planning Advisory Board *(16 members)*	Governor, Legislative leadership, & Chief Justice	Includes 4 members from each branch of gov't and 4 citizens
Nebraska	Task Force on Building Renewal *(5 members)*	Director of Administrative Services	Members must have relevant knowledge and expertise
New Jersey	Commiss. on Capital Budgeting & Planning *(12 members)*	Legislative leadership and Governor (Senate confirms)	Includes State Treasurer, members of both parties
New Hampshire	Executive Council *(5 members)*	Members elected from special council districts	Elected council acts in coordination with Governor
New York	New York Works Task Force *(16 members)*	Governor and Legislative leadership	Includes a union member, members of both parties
Oklahoma	Long Range Capital Planning Commission *(9 members)*	Governor and Legislative leadership	Governor, Senate President, House Speaker each appoint 3
Oregon	Capital Projects Advisory Board *(7 members)*	Governor	5 private citizens with relevant expertise, 2 public employees
Rhode Island	Capital Development Planning & Oversight *(11 members)*	Governor	State Budget Officer serves as Chair
Tennessee	State Building Commission *(7 members)*	Positions designated for specific officeholders	Includes Governor, Treasurer, Comptroller of the Treasury
Utah	State Building Board *(8 members)*	Governor	Includes Director of the Office of Management and Budget
Wisconsin	State Building Commission *(9 members)*	Governor and Legislative leadership	Must include members of both major political parties
Wyoming	State Building Commission *(5 members)*	Positions designated for specific officeholders	Includes Governor, Treasurer & Super. of Public Instruction

Source: State statutes, compiled by Think New Mexico.

Interestingly, this sort of process is not unknown in New Mexico: it's how we have funded most of our public school construction for the past 15 years.

The Public School Capital Outlay Council

In 1998, the Zuni Public School District filed a lawsuit against the state of New Mexico over the severe inequality of public school capital funding. At the time, public school buildings were paid for primarily with local property taxes (as well as some earmarked appropriations in the Christmas Tree Bill). Since most of the land within the borders of the Zuni district was non-taxable federal and Indian reservation property, the district lacked funds to keep its schools in decent condition.

The judge ruled in Zuni's favor, directing the state of New Mexico to develop a system for funding school capital improvements that would meet the needs of all students, regardless of their district's ability to pay. In response, the legislature and governor enacted the Public School Capital Outlay Act.

Under this law, the Public School Capital Outlay Council develops a uniform set of standards that schools need to meet in order to be considered adequate learning environments. Using these objective criteria, the technical staff of the Public School Facilities Authority (PSFA) evaluates all of the state's schools and ranks the needed repairs and new buildings from the most urgent to the least.

Each year, some of the state's severance tax bonds are dedicated to funding these school repair and replacement projects in order of their priority. Local school districts are required to match the state funds on a sliding scale that ranges from 90% in the wealthiest districts to 0% in Zuni, with an average match requirement of around 50%.

New Mexico's Public School Capital Outlay Council

Governor (*or designee*)
Director, Legislative Finance Committee
Director, Legislative Council Service
Director, Legis. Education Study Committee
Secretary of Finance & Administration
Secretary of Education
President of NM School Boards Association
President, State Board of Education
Director, Construction Industries Division, Regulation & Licensing Department

Source: New Mexico Statute 22-24-6. Each member of the council may designate a representative to serve in his or her place.

This objective, apolitical process of funding school capital expenses has proven remarkably successful. Former House Majority Leader Rick Miera has written that "the Zuni lawsuit is one of the best things that happened to the state of New Mexico…[because] the lawsuit forced us to do the right thing" when it came to public school infrastructure funding.

Since the Public School Capital Outlay Act took effect, the statewide "facility condition index" (or the average percentage of each school building in need of repair) has fallen from 71% to 35%. Moreover, a 2014 poll of school district employees found that 87% feel that the PSFA has had a positive impact on New Mexico's schools.

Water, Tribal, and Colonias Infrastructure

The Public School Capital Outlay Act is actually only one of several examples in which New Mexico has improved the funding process for a particular type of infrastructure. In 2001, the legislature unani-

Groundbreaking for Moriarty Middle School in 2010, financed through the Public School Facilities Authority. Photo courtesy New Mexico Public School Facilities Authority, all rights reserved, reprinted by permission.

mously passed the Water Project Finance Act, which was tasked with prioritizing and funding the state's estimated $2.3 billion in critical water infrastructure needs.

This law created the Water Trust Fund, overseen by a 16-member Water Trust Board. Positions on the board were designated for representatives of New Mexico's diverse water stakeholders, including tribes, cities, irrigators, and environmentalists.

The Water Trust Board uses a list of specific criteria to evaluate and rank water infrastructure projects, which include considerations of whether the project is urgent, shovel-ready, cost-effective, and necessary to address immediate public health and safety concerns. Each project ultimately receives a score from 0–100 points.

Once the board has ranked and prioritized the list of water projects, that list is sent to the legislative Finance Authority Oversight Committee for its approval, and then is voted on by the full legislature and sent to the governor. Once the list of projects is approved, the Water Trust Board can release funds for them, using money from a dedicated 10% of the state's severance tax bond proceeds.[2] As with public schools, the local entities requesting projects must provide some level of matching funds.

Two more boards for prioritizing and funding specific types of infrastructure projects have been created in the years since the Water Trust Board was established. In 2005, a law was passed to create the Tribal Infrastructure Board, which brings together key stakeholders including members of tribal nations and the Secretary of Indian Affairs. The board uses quantitative criteria to prioritize urgent projects in tribal communities, and they are funded with 5% of severance tax bond revenues.[2]

Five years later, the Colonias Infrastructure Board was created to improve living conditions in the state's colonias. This board also receives a dedicated funding stream of 5% of severance tax bond revenues to construct the infrastructure projects it prioritizes.[2]

These existing models show how we can create a system of public infrastructure financing that drains out the politics and prioritizes urgent needs. The time has come to take the next step and reform the rest of New Mexico's public infrastructure spending.

2] These percentages will change slightly over the next few years due to the enactment of a 2015 law that decreases the amount of severance tax revenues that can be used for bonds in order to send more dollars to the Severance Tax Permanent Fund.

FIXING THE CHRISTMAS TREE BILL

The first step to transforming New Mexico's infamous Christmas Tree Bill into an effective system for funding the state's infrastructure begins with planning.

Fortunately, the foundation of that planning process is already in place. As we described earlier in this report, each year, every state agency and local government creates an Infrastructure Capital Improvement Plan, prioritizing their capital needs.

However, these individual plans are never compiled into a single comprehensive statewide infrastructure plan. This is the first essential piece of reform: creating a state infrastructure plan for New Mexico.

The key question, of course, is who should create it?

Since the governor has a statewide perspective and legislators are the experts on their districts, we believe that the best approach would include perspectives from both branches. We recommend the creation of a board that includes an equal number of technical staff from the legislative and executive branches. Core members might include the Director of the Legislative Finance Committee, the Director of the Legislative Council Service, the Secretary of the Department of Finance and Administration (DFA), and the Director of the Capital Outlay Planning and Monitoring Bureau of the DFA.

The board might also include representation from legislative appointees and cabinet secretaries of agencies responsible for significant infrastructure projects, such as the Department of Transportation, the Higher Education Department, the Cultural Affairs Department (museums), the Aging and Long-Term Services Department (senior centers), and the Environment Department (water systems). Local governments could be represented through the Local Government Division of DFA or the New Mexico Association of Regional Councils of Governments. (This recommended membership is similar to the Capital Outlay Planning Council proposed in Senate Bill 162, introduced by Senator Carlos Cisneros in 2014.)

Key Members of the Proposed New Mexico Capital Outlay Planning Board

Director, Legislative Council Service

Director, Legislative Finance Committee

Principal Capital Outlay Analyst, LFC

Secretary of Finance & Administration

Director, Capital Outlay Bureau of DFA

Director, Local Gov't Division of DFA

The Capital Outlay Planning Board would take all of the separate infrastructure plans developed by state agencies and local governments and combine them into a comprehensive statewide infrastructure plan.

Most importantly, the board would use criteria developed by the Legislature and Executive to rank and prioritize the thousands of needed capital projects and determine which are most urgent. The board's scoring system might look something like the sample criteria sheet that has been creat-

WHY BOND AT ALL?

When New Mexico first began bonding, we were borrowing only periodically to pay for big infrastructure projects that the state couldn't afford with a single year's tax revenues. Today, between general obligation bonds, highway bonds, and severance tax bonds, the state is in a constant cycle of using taxpayer dollars to secure new debt while simultaneously paying off previously authorized bonds.

Not every state uses bonds to pay for infrastructure. According to the National Association of State Budget Officers, 22 states maintain formal or informal "pay as you go" policies, funding capital projects with current income rather than debt.

Most of these states still bond occasionally, but they either require that alternative funding mechanisms be utilized before bonding (like Nevada) or reserve bonding for major projects (like Michigan). Iowa, Montana, Nebraska, and North Dakota operate almost exclusively "pay as you go."

As the director of Iowa's Department of Transportation says: "Pay as you go is the right thing, [as] many other states are paying hundreds of millions of dollars annually in interest payments for roads and bridges already constructed."

Now that New Mexico brings in hundreds of millions of dollars annually in severance taxes, perhaps it is time to use more of them directly and "pay as we go," rather than borrowing.

ed by the DFA to help guide local governments in ranking their diverse capital needs (shown on page 25).

Similar to the Public School Facilities Authority, Water Trust Board, Tribal Infrastructure Board, and Colonias Infrastructure Board, the Capital Outlay Planning Board would require local governments to provide some level of matching non-state funding (such as local bonds or federal dollars) to help complete the construction of local projects. This match could be calculated on a sliding scale, as it is under the Public School Capital Outlay Act, so that communities with fewer resources would not be disadvantaged.

Requiring matching funding would do more than stretch scarce capital dollars and ensure that projects are fully funded: it would also put the interests of local governments ahead of those of lobbyists. Today, as we described earlier in this report, cities and counties often end up receiving capital outlay funding for low-priority projects – or, worse, projects that the locality does not want at all – simply because a lobbyist has slipped that project into the bill on behalf of a special interest. However, if a project can only be funded if the locality is willing to raise matching dollars, those unwanted projects will disappear.

Another element of reform might be to set minimum dollar amounts for what is included in the state capital plan. According to the National Association of State Budget Officers, at least 15 states set minimum requirements for capital appropriations, such as $25,000, $50,000 or even $100,000. In 2015, 58% of the projects in the Christmas Tree Bill were $100,000 or smaller.

We recommend that the legislature consider setting a minimum size for capital appropriations in

New Mexico – at least for projects funded with bond dollars, since we are paying interest on them. Projects smaller than the minimum could be funded "pay as you go" with General Fund dollars.

It is worth noting that in most years, the Christmas Tree Bill includes some portion of General Fund dollars – $30 million in 2015, for example. These dollars could be set aside for smaller, shorter-term projects, such as equipment purchases, that still qualify as important community needs.

Once the plan is in place, the final step is ensuring that it actually serves as the basis for funding decisions.

Here, we recommend that New Mexico adopt a process similar to that in Oklahoma: direct the Capital Outlay Planning Board to draft legislation that fully funds the top priorities in the state infrastructure plan. This bill would be introduced by legislators during the regular legislative session.

Sample Criteria for Ranking Projects

CRITERIA	3 POINTS	2 POINTS	1 POINT	0 POINTS
Public Health & Safety	Project needed to alleviate actual health/safety hazard	Project needed to alleviate potential health/safety hazard	Project would promote or maintain health or safety	Project has no health or safety impact
External Factors	Project required by law, regulation, or court mandate	Project required by another agency or government unit	Project to be done in coordination with other agency/unit	Project is internally required
Protection of Capital Investments	Project critical to save structural integrity of facility	Project needed to repair important facility systems	Project will reduce need for future expenditures	No existing facility is involved
Operating Budget Impact	Project will decrease operating costs	Project will result in small or no added operating costs	Project will have some additional operating costs	Project will likely require significant operating costs
Scheduling	Project will be started within one year	Project will be started in 2–3 years	Project will be started in 4–5 years	Project timing is uncertain
Financing	Project revenue will be sufficient to cover most expenses	Project financing plan has been developed	Potential project financing plan has been identified	No project financing plan has been developed
Goals	Project goals are fully developed	Project development plan proposed	Potential plan has been identified	Project goals have not been identified

Source: NM Department of Finance & Administration, "FY 2017–2021 Infrastructure Capital Improvement Plan Local Government ICIP Guidelines," Appendix D.

Both the legislature and the governor would have the power to "line-item veto" projects and remove them from the list, but new projects could not be added. Once the list is approved, the process of funding and monitoring projects could proceed as it currently does.

Meeting the Needs of Local Communities

When reforms to New Mexico's Christmas Tree Bill have been proposed in the past, the main sticking point has been concerns that local priorities might be overlooked, or that small rural communities might not get their fair share if they are competing with bigger projects in places with larger populations.

The problem with this argument is that local needs are not being met by the current system, under which cities and counties receive appropriations that are often not large enough to even begin construction of their priority projects, let alone finish them.

Under our proposed reforms, the most urgently needed projects would be fully funded, regardless of their geographic location or size. Communities would no longer endure years of delay while trying to cobble together enough dollars to replace a derelict courthouse or shore up a leaky dam.

Additional Benefits of Reform

Along with ensuring that urgent infrastructure projects are fully funded, these reforms will also make the process fairer and more transparent.

As we noted earlier in this report, the current capital outlay process unfolds largely out of sight of the public. By contrast, the process we propose here would take place out in the open with documentation of which projects were selected and why.

Legislators would also benefit from no longer having to deal with the annual avalanche of capital outlay requests from lobbyists for special interests. It is impossible for citizen legislators juggling hundreds of bills to effectively evaluate the multitude of capital requests they receive; no matter what they do, many constituents will be disappointed in the projects that are not chosen, and as legislators attempt to satisfy as many people as possible, large capital needs in their districts go uncompleted.

Finally, these reforms also offer the potential to save taxpayer dollars. Today, the five employees of the DFA's Capital Outlay Bureau, some of the 37 employees in the DFA's Local Government Division, and at least two analysts in the LFC are dedicated to administering, tracking, and monitoring the thousands of capital outlay projects approved for funding – many of which take years to be completed. Fully funding the top priority projects would reduce the overall number of individual projects and would reduce the number of years that each project has to be tracked (since most would no longer be funded over multiple years). This could free up personnel and resources that could be put toward other purposes, such as staffing the Capital Outlay Planning Board.

Ideally, that staff would include the technical experts on capital outlay from both the LFC and DFA, brought together into a joint legislative-executive Capital Outlay Planning Agency, similar to the PSFA. This would end any duplicative efforts currently being performed by both branches. The agency's professional staff would assist the board with the prioritization process and would also track projects through to their completion, ensuring that New Mexico's infrastructure dollars are spent as efficiently and effectively as possible.

A GIFT FOR TAXPAYERS

In 1978, one year after passage of the first Christmas Tree Bill, George Buffett was elected to the New Mexico House of Representatives from an Albuquerque district. When he got to the legislature, he was deeply troubled by the capital outlay process. "Big things are never done and some things are done halfway," he told the *Albuquerque Journal* in 2000. Buffett never took a penny from the Christmas Tree Bill, although his district was entitled to millions of dollars.

Representative George Buffett. Photo courtesy Patty Buffett.

Despite consistently failing to bring home any "bacon" to his district, Buffett easily won reelection a dozen times, serving until 2002 and defying the conventional wisdom that capital outlay dollars are essential to winning votes.

Buffet is not the only elected official who has taken a public stance against the Christmas Tree Bill. After this year's bill failed to pass during the regular session, Governor Martinez discussed the need for reform in multiple public forums. "We need to fully fund projects," she said, noting that when capital outlay funds are used correctly, they create jobs and address infrastructure problems "that are long-standing, expensive to remedy, capable of disrupting public life, and threatening public safety."

Meanwhile, in the legislature there is growing bipartisan agreement about the need for reform. Senator John Arthur Smith (D-Deming), wrote in an April 2015 opinion editorial that "a more important use of policymaker time [than a special session] would be to reform the capital outlay process that now too often leads to money being set aside for projects that never happen."

Representative Jason Harper (R-Rio Rancho) seems to agree: "We're the only state that does it this way, where individual legislators get a certain amount of dollars to bring home to their district. I really think we should consider going to something that's similar to our public school capital outlay."

In the years since the passage of the first Christmas Tree Bill, legislators of both parties have introduced a number of bills to reform the process, and Governors Gary Johnson, Bill Richardson, and Susana Martinez have also championed reform efforts. One reason these attempts have failed is that, as with any change to an established system, reform will create winners and losers. The biggest losers in capital outlay reform would be lobbyists who are paid by special interests to acquire capital outlay dollars.

Yet reform would produce far more winners than losers. The biggest winners would be taxpayers, as well as the local governments, school districts, and other entities whose lobbying expenses would decrease if they were freed from having to seek capital dollars through a dysfunctional system. Instead, their capital needs would be met through a rational, apolitical, merit-based process.

The proposals set forth in this report are consistent with recommendations that have been made by both the Legislature and Governor's Office. In 2006, the Legislative Finance Committee published a critical analysis of the state's capital outlay process, calling on the state to "establish a single, unified state capital outlay and planning board…[and] establish qualitative and quantitative criteria to evaluate capital projects." The report emphasized that fully funding infrastructure projects would "increase the state's economic wealth by creating jobs and assets."

Seven years later, many of the same proposals were endorsed by the Executive Branch when they were presented to a legislative interim committee by Ryan Gleason. (Gleason then served as Local Government Division Director for the New Mexico Department of Finance and Administration; he is now Chief of Staff to House Speaker Don Tripp.) Gleason also recommended that local matches be required and that the legislature consider modeling reform on the processes laid out in the Public School Capital Outlay Act.

Senator Pete Campos has been one of the most vocal advocates of reform, even authoring his 2003 PhD dissertation on the subject. He wrote that the Christmas Tree Bill was rightly seen by "constituents, bonding companies, and those who may consider relocating to New Mexico as archaic, parochial, and highly political." He called on New Mexico to adopt "a central, apolitical planning process to identify, prioritize, and recommend for final approval by the Legislature and the governor the projects that should be funded."

Campos also highlighted the potential benefits of reform: "Not all [legislators] would get what they wanted, but major needs would be addressed and eventually our state and local communities would have basic infrastructure needs addressed. That would improve economic development... and the job market. In turn, our tax base would improve and more money would become available to meet the needs and wants."

After nearly four decades, it is time to put an end to New Mexico's Christmas Tree Bill and give New Mexicans the best gift of all: a system of public infrastructure funding that creates jobs, strengthens the economy, and meets the needs of current and future generations.

Think New Mexico's Capital Outlay Reforms

ENACT LEGISLATION TO:

- Create an independent Capital Outlay Planning Board
- Direct the board to develop a comprehensive annual infrastructure plan using a transparent, merit-based process that ranks projects based on criteria developed by the Legislature and Governor
- Introduce legislation annually to fully fund the projects in the plan in priority order
- Empower both the Legislature and the Governor to "line-item veto" projects but not add new projects to the list
- Require a local match for local projects, calculated on a sliding scale
- Set a minimum size for capital projects funded with bonds

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