

NOTICE OF RULEMAKING

The State Board of Finance (the Board) has extended the comment period and rescheduled the public hearing for the proposed repeal and replacement of New Mexico Administrative Code (NMAC) rule 2.70.4 NMAC, *Policy on Capital Expenditures by State Educational Institutions*. The proposed replacement seeks to: align capital expenditure thresholds to be more in line with modern costs of projects; add more detailed definitions to clarify project approvals required; and align Board requirements with construction requirements set out in 14.7.9 NMAC.

Section 21-1-21, NMSA 1978, as amended, requires State Board of Finance approval by any state educational institution confirmed by Article 12, Section 11 of the state constitution for the purchase of real property or construction of buildings or other major structures or major remodeling projects.

Notice Date: September 24, 2024

Hearing Date: November 1, 2024

Adoption Date: Proposed as November 19, 2024

Technical Citations: 14.7.9 NMAC

The Department is proposing to amend the rule as follows:

Throughout the rule:

1. Language is updated to change the dollar amounts for projects.
2. Language is added to define the term “Remodel”.
3. Language is added to define the term “Renovation”.
4. Language is added to define the term “Repair”.
5. Language has been simplified or updated to allow the rules to be more coherent.
6. Language is added to reflect required certification by the Higher Education Department and the Energy, Minerals, and Natural Resources Department that buildings meet current energy compliance standards as outlined in 14.7.9 NMAC.
7. Several sections have been renumbered due to new sections being added into the NMAC.

Section 7

This section is renumbered due to new definitions and subsections added to the NMAC.

This section is updated to add new definitions.

Subsection A - is added to define the term “Appraisal Report”

Subsection B - is added to define the term “Board”

Subsection C - is added to define the term “Current”

Subsection D - is added to define the term “Equipment Costs”

Subsection E - parts 1, 2, 3, and 4, have been updated with new dollar amounts.

Subsection G - is updated to add the new definition for the term “Remodel”.

Subsection H - is updated to add the new definition for the term “Renovation”.

Subsection I - is updated to add the new definition for the term “Repair”.

Section 8

Subsection A - part 4 - is updated to remove to non emergency repair

Section 9

Subsection A - part 2 is updated to clarify the language about property appraisals and the documents required for review.

Subsection A - part 6 is updated to clarify the language title binders the documents required for review.

Subsection A - part 7 is updated to clarify the language about distinguishing that when an education institution procures real property, a general warranty deed shall be required. However, when a seller is another governmental entity, a quitclaim deed shall be delivered to procurer.

Subsection A - part 9 is updated to replace the language acquisition with purchase and other grammatical corrections.

Subsection A - part 10 is updated to replace the language acquisition with purchase and clarify the language about educational institution’s governing body.

Subsection B - is updated to correct language and separate out bond approvals language to Subsection C.
Subsection C - is added and language from subsection B about requirements of bond approvals.

Section 10

Title - is updated to remove the term REPAIRS

Subsection A - is updated to clarify language and correct grammatical errors.

Subsection A - part 1 is updated to replace the term repaired for remodeled.

Subsection A - part 3 is updated to replace the term repair for remodel.

Subsection A - part 4 is updated to add the term equipment costs.

Subsection A - part 8 is updated to add the approval of the Energy, Minerals, and Natural Resources Department.

Subsection A - part 8a is updated to add the certification and demonstration of compliance with 14.7.9 NMAC commercial conservation requirements.

Subsection A - part 8b is added and adjusted with the addition of part 8a as Subsection A part 8b, formerly part 8a.

Subsection A - part 8c is added and adjusted with the addition of part 8a as Subsection A part 8c, formerly part 8b.

Subsection A - part 8d is added and adjusted with the addition of part 8a as Subsection A part 8d, formerly part 8c.

Subsection B - is updated to correct language and separate out bond approvals language to Subsection C.

Subsection C - is added and language from subsection B about requirements of bond approvals.

These proposed rule changes will be contained in 2.70.4 NMAC. The register and the proposed rule are available on the SBOF website at: <https://www.nmdfa.state.nm.us/board-of-finance/rules-and-policies/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting SBOF at bof.administrator@dfa.nm.gov and (505) 827-3985.

The SBOF plans to adopt this rule November 19, 2024.

A public hearing to receive testimony on this proposed rule will be held on November 1, 2024, at 9:30 a.m. The hearing will be held at the New Mexico Public Education Department, Marbry Hall Auditorium, 300 Don Gaspar Avenue, Santa Fe, New Mexico, 87501, and via Microsoft Teams.

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If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact our staff to discuss your accessibility needs at least one week prior, or as soon as possible, by emailing the State Board of Finance administrator at: bof.administrator@dfa.nm.gov or calling 505-827-3985.

Copies of all comments will be made available by SBOF upon request by providing copies directly to a requestor or by making them available on the SBOF website or at a location within the county of the requestor.

Interested persons may address written comments to:

State Board of Finance

ATTN: SBOF 2.70.4 NMAC Public Comments

407 Galisteo St.
Bataan Memorial Building, Room 181
Santa Fe, NM 87501

Recorded comments may be left at (505) 827-3985. Interested persons may also address comments via electronic mail to: bof.administrator@dfa.nm.gov. Written mail, electronic mail and recorded comments must be received no later than 5:00 p.m. MT on October 28, 2024. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the SBOF website at <https://www.nmdfa.state.nm.us/board-of-finance/rules-and-policies/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.